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SENATE

REPORT
No. 97-372

1982 OMNIBUS TERRITORY AUTHORIZATION

APRIL 29 (legislative day, APRIL 13), 1982.—Ordered to be printed

Mr. WEICKER, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 5139]

The Committee on Energy and Natural Resources, to which was referred the act (H.R. 5139) to authorize appropriations for certain insular areas of the United States, and for other purposes having considered the same, reports favorably thereon with an amendment to the text and recommends that the act as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

TITLE I—GUAM

SEC. 101. Section 7 of the Organic Act of Guam (64 Stat. 384, 487), as amended, is revised to read as follows:

"SEC. 7. (a) The people of Guam shall have the right of initiative and referendum, to be exercised under conditions and procedures specified in the laws of Guam.

"(b) Any Governor, Lieutenant Governor, or member of the legislature of Guam may be removed from office by a referendum election in which at least two-thirds of the number of persons voting for such official in the last preceding general election at which such official was elected vote in favor of recall and in which those so voting constitute a majority of all those participating in such referendum election. The referendum election shall be initiated by the legislature of Guam following (a) a two-thirds vote of the members of the legislature in favor of a referendum, or (b) petition for such a referendum to the legislature by registered voters equal in number to at least 50 percentum of the whole number of votes cast at the last general election at which such official was elected preceding the filing of the petition.".

SEC. 102. Section 1(a)(1) of Public Law 95-348 (92 Stat. 487) is amended by deleting "involved." and inserting in lieu thereof "involved, and $5,000,000 for fiscal year 1983."

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TITLE II—TRUST TERRITORY OF THE PACIFIC ISLANDS

SEC. 201. In section 402(a) of Public Law 96–597 (94 Stat. 3478) strike "by October 1, 1982," and insert in lieu thereof: "by a date not later than ninety days following termination of the trusteeship agreement governing the administration of the Trust Territory of the Pacific Islands,".

TITLE III—VIRGIN ISLANDS

SEC. 301. (a) Effective October 1, 1982, there is authorized to be appropriated to the Secretary of Interior $150,000 to be paid as a grant to the government of the Virgin Islands for use by the College of the Virgin Islands to study and plan for the creation of an institution for Caribbean educational, cultural, and technical interchange.

(b) The Secretary may place such stipulations as he deems appropriate on the use of funds appropriated pursuant to subsection (a) of this section.

(c) Grant funds appropriated pursuant to subsection (a) but not obligated or expended during the fiscal year in which they are appropriated shall remain available for obligation or expenditure in subsequent fiscal years.

SEC. 302. Section 405 of Public Law 96–205 (94 Stat. 84, 89) is amended by adding at the end thereof the following new sentence:

"The officials of the Customs and Postal Services of the United States are directed to assist the appropriate officials of the United States Virgin Islands in the collection of these taxes.".

TITLE IV—MISCELLANEOUS

SEC. 401. Effective October 1, 1982, there is authorized to be appropriated to the Secretary of the Interior for Fiscal Years 1983, 1984, and 1985 such sums as may be necessary for grants to the Virgin Islands and Guam to reimburse such areas (in amounts equal to any reductions in revenues) for any revenue reductions they sustain as a result of the enactment of any general Federal tax revision or reduction: *Provided*, That for fiscal years 1984 and 1985 such authorization is limited to the reduction in revenue levels from fiscal years 1983 and 1984 respectively.

SEC. 402. Section 607 of Public Law 96–597 (94 Stat. 3477, 3483) is amended by deleting subsections (b), (c), and (d) and inserting in lieu thereof the following:

"(b) The Governors of Guam and the Virgin Islands shall, as a condition for a grant pursuant to subsection a of this section, submit a plan which is designed to eliminate the respective territory's general fund deficit by the beginning of Fiscal Year 1987 to the Secretary of the Interior. Within sixty days after he has received such a plan, the Secretary of the Interior shall transmit the plan, together with his comments and recommendations to the Congress. The plan shall provide for—

"(1) implementation of an effective budgetary and accounting system;

"(2) realistic revenue and expenditure projections which will progressively reduce current year general fund deficits and result in a balanced general fund budget no later than the beginning of fiscal year 1987;

"(3) financing of accumulated general fund deficits; and

"(4) quarterly goals and timetables for implementing the plan. The plan shall also indicate that the Governor has the necessary authority to implement the plan.

"(c) Not later than thirty days after the close of each quarter which occurs after the plan has been transmitted to the Congress, the respective Governor shall submit a report to the Secretary of the Interior and the Congress describing in detail the success or failure of such territory in meeting the goals and timetables described in such plan.".

PURPOSE OF THE MEASURE

The purpose of this measure, as reported, is to—

(1) Authorize initiative and referendum in Guam and recall of the Lieutenant Governor and members of the Legislature;

(2) Change the date for transfer of federal property in the Trust Territory of the Pacific Islands;

(3) Authorize $150,000 for planning for a Center for Caribbean Studies at the College of the Virgin Islands;

(4) Authorize $5 million for construction projects in Guam;

(5) Authorize the Postal Service and Customs Service to assist the Virgin Islands in the collection of excise taxes;

(6) Authorize incremental revenue loss reimbursement to Guam and the Virgin Islands due to Federal tax legislation; and

(7) Modify the procedure for deficit elimination plan submissions from Guam and the Virgin Islands.

Background and Explanation of Committee Amendments

TITLE I—GUAM

Guam is an unincorporated organized territory of the United States approximately 3,700 miles west of Hawaii. The territory contains 255 square miles of land area and has a population of approximately 100,000 of which 20,000 are military personnel.

Guam was ceded by Spain to the United States on December 10, 1898 by the Treaty of Paris following the Spanish-American War. It was administered by the U.S. Navy until 1950 and since then by the Department of the Interior. Pursuant to the Organic Act of 1950; it is self governing with a popularly elected Governor and legislature.

Section 101 of the committee amendment would amend section 7 of the Organic Act of Guam to provide for initiative and referendum and for the recall of the Lieutenant Governor and members of the legislature. Section 7 presently provides a process only for the recall of the Governor. This language was requested by Guam and is necessary since the Government of Guam may exercise only those powers provided under the organic legislation which does not authorize legislation by initiative. The Lieutenant Governor and members of the legislature are elected and hold office pursuant to the organic legislation which similarly does not provide for recall of these officials as it does for the Governor.

This section was included as title I of H.R. 5139 as passed by the House. The Committee amendment would rewrite section 7 of the Organic Act rather than simply inserting new language as proposed by title I of H.R. 5139 as passed.

Section 102 would authorize $5 million for ocnstruction grants to Guam for water transmission lines in Dededo/Mangilao, Windward Hills and Yona/Chalan Pago and dry dock facilities on Cabras Island. The administration proposed 75 percent funding ($3,165,000) of these projects in S. 2264, but the committee has authorized full funding plus funds to train personnel for maintenance of the projects. It is uncertain whether Guam has sufficient funds to make any contribution to the completion of these projects and the committee feels that the Appropriations Committee should have the flexibility to consider the Federal responsibility for the territories, the national interest in the projects, their contribution to the development of the economy of Guam, and the capability of Guam to make a contribution to the project cost. In addition, the committee feels that the administration and the Congress should consider including, as an element of any construction project, funds to train personnel to maintain the project.

TITLE II—TRUST TERRITORY OF THE PACIFIC ISLANDS

The Trust Territory of the Pacific Islands is comprised of the Micronesian island groups of the Marshalls, Carolines, and Marianas (except for Guam, which is an unincorporated territory of the United States). The far western boundary of the area is only 500 miles from the Philippines and Hawaii is some 1,800 nautical miles from the eastern border. The 2,100 islands of the trust territory cover an ocean area approximately the size of the Continental United States with a land area of 516 square miles. Only about 100 of the islands are inhabited with a population of 130,000.

The trust territory is administered by the United States pursuant to a trusteeship agreement with the United Nations dated July 19, 1947.

Section 201 would amend section 402(a) of Public Law 96–597 to change the effective date for the transfer of Federal property in the trust territory from October 1, 1982 to "a date not later than ninety days" from the date of termination of the trusteeship. The original date assumed termination of the trusteeship in 1981, which has not occurred.

TITLE III—VIRGIN ISLANDS

The U.S. Virgin Islands is an organized, unincorporated territory of the United States. The Virgin Islands consists of three principal islands and approximately 50 smaller islands and inlets located in the Caribbean Sea approximately 40 miles east of Puerto Rico. The three principal islands are St. Thomas (where the capital, Charlotte Amalie is located), St. Croix, and St. John. Water Island and Hassel Island adjacent to St. Thomas are also inhabited. The territory contains 130 square miles of land area with a population of around 100,000.

The Virgin Islands was acquired from Denmark by a treaty signed August 4, 1916, for the sum of $25 million. Pursuant to the 1936 Organic Act, the 1954 Revised Organic Act, and subsequent amendments, the Virgin Islands, is self-governing with an elective Governor and legislature.

Section 301 would authorize $150,000 for a Center for Caribbean Studies at the College of the Virgin Islands. Funding for the center was included as a specific item in the White House Fact Sheet which accompanied the President's Caribbean Basin Initiative.

Section 302 of the amendment authorizes officials of the U.S. Postal Service and Customs Service to assist officials of the government of the Virgin Islands in the collection of excise taxes. A similar provision was included as section 202 of S. 1674.

The U.S. Postal Service supported the provision to the extent that it authorized assistance comparable to that provided Puerto Rico under 48 U.S.C. 741(a) and Domestic Mail Manual section 115.96. The Customs Service noted that assistance was already being provided pursuant to section 603 of Public Law 96–205.

The need for the provision arose as a result of section 405 of Public Law 96–295 which authorized the Virgin Islands to levy excise taxes on goods at the point at which the goods entered the territory. Officials of the Virgin Islands requested assistance from the Postal Service for permission to take down the names and addresses from packages. The Postal Service provides this assistance in Puerto Rico and had

sufficient authority under the 1917 Act. The Postal Service felt that it was unclear if this authority survived the 1936 Organic Act and 1954 Revised Organic Act enactments. No interference or delay in the delivery of mail would be contemplated or authorized by this section. To clarify that the authorization is directed at those excise taxes levied on goods at the time they are brought into the territory, the amendment modifies the language of S. 1674 to refer directly to section 405 of Public Law 96–205.

TITLE IV—MISCELLANEOUS

Section 401

This section would authorize grants to Guam and the Virgin Islands to offset any reduction in revenues resulting from Federal tax legislation. The authorization is limited to the incremental reduction in 1983 from 1981 base levels, in 1984 from 1983 levels, and in 1985 from 1984 levels calculated as if the Federal tax changes had not been enacted. Unlike the several States, the territories of Guam and the Virgin Islands do not have independent taxing authority on income. The Federal internal revenue laws apply as the local tax and changes in Federal tax laws are automatically mirrored in the territory resulting in reduced revenues. The Congress has previously enacted legislation to reimburse these territories for the revenues lost due to the Tax Reduction Act of 1975, the Tax Reform Act of 1976, and the Tax Reduction and Simplification Act of 1977. In addition, in order to provide some flexibility, Congress has authorized each territory to levy a 10 percent surtax. However, the February 19, 1982, report from the Department of the Interior on the impact of tax changes and Federal program reductions indicates that revenue losses will greatly exceed the 10 percent. The intent of this section is not to hold the territories harmless from the effect of the law, but to provide the territories with a 1-year delay in the impact of the tax changes on their revenues. If the territories are unable to maintain essential services in future years, they should request direct authorizations for operations as has been done in the past and as annually occurs in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

The committee is concerned with the continued inability of the mirror tax formula to provide an adequate and assured base for territories to plan and administer local program responsibilities. The committee is equally concerned with the impact of Federal program reductions on the economies and local government resources of the territories. Accordingly, the committee recommends that the Secretary of the Interior consult with the appropriate officials from each of the insular areas as part of the comprehensive review of alternatives to allocate Federal and local government responsibilities and to provide the local governments with a degree of certainty in developing their annual budgets consistent with the Federal responsibility for these areas.

Section 402

This section would amend section 607 of Public Law 96–597 which authorized a series of decreasing grants to Guam and the Virgin Islands to eliminate their general fund deficits. Public Law 96–597 re-

quired the Secretary of the Interior to approve a deficit elimination plan submitted by each Governor. This section would eliminate the requirement for the Secretary to approve the plan and would replace it with a 60-day review period after which the Secretary is to transmit the plan, with his comments and recommendations, to the Congress. The requirements of the plan are not altered.

The committee is concerned that the territories are not being fully consulted in decisions by Federal agencies to reduce or eliminate services and is equally concerned that the Secretary of the Interior, who is charged with the responsibility for these areas, is not involved in the decisions. Given the narrow economic base of the insular areas and the limited resources available to the local governments to absorb such reductions and maintain basic services, the committee believes that the Secretary of the Interior should participate more aggressively in the future in such decisions.

The amendment would delete title IV of H.R. 5139. Title IV of H.R. 5139 would have authorized the Secretary of the Interior to guarantee loans or other obligations of the American Samoa Power Authority. The administration has indicated support for such authority in the fiscal year 1983 budget submission for the Department of the Interior, but has not transmitted legislation to the Congress. Also, the government of American Samoa does not have authority to issue bonds or obligations under its constitution which is established by secretarial order. The most recent report on the American Samoa Power situation was released on August 27, 1981 by the Department of the Interior and noted that "only 4 of the 10 territory generators are operating, and these have been derated by approximately 20 percent, or 2.3 megawatts, due to mechanical problems. The current (April 1981) maximum operating capacity of the American Samoa government equipment is 8.9 megawatts." The peak demand load is 12.9 megawatts with an average demand load of 10.5 megawatts and this is being met only by use of leased Army generators. The report noted that preventive maintenance is impossible since generators cannot be taken out of service and that due to pay levels qualified personnel cannot be obtained. The report concluded that

> [A]n appropriate objective for the power authority is to improve the utility's operating and financial condition sufficiently to enter the private bond market for capital improvements. This is not possible at present since the power authority could not receive a favorable bond rating.

Since authorizations already exist for grants or direct loans to American Samoa, American Samoa does not have the authority to issue bonds or other obligations for this purpose, and the Department's report concludes that a favorable rating would not be possible, the amendment would delete this provision.

Legislative History

H.R. 5139 was introduced on December 8, 1981, and was reported to and passed by the House on December 11, 1981. Similar legislation,

S. 1674, was introduced by Senator Weicker on September 28, 1981 and was the subject of hearings by the committee on October 21, 1981. An amendment in the nature of a substitute was offered by Senator Weicker for himself and Senators McClure, Johnston, and Matsunaga.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on March 31, 1982, by unanimous vote of a quorum present recommends that the Senate pass H.R. 5139, if amended as described herein.

Cost and Budgetary Considerations

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., April 16, 1982.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 5139, a bill to authorize appropriations for certain insular areas of the United States, and for other purposes.

Should the committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin, *Director.*

Congressional Budget Office—Cost Estimate

April 16, 1982.

1. Bill number: H.R. 5139.
2. Bill title: A bill to authorize appropriations for certain insular areas of the United States, and for other purposes.
3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources, March 31, 1982.
4. Bill purpose: The bill would authorize the appropriation of $150,000 for a Center for Caribbean Studies at the College of the Virgin Islands and such sums as may be necessary for grants to the Virgin Islands and Guam as reimbursement for any revenue reductions in fiscal years 1983 through 1985 resulting from enactment of general federal tax revisions. H.R. 5139 would also provide the right initiative and referendum to the people of Guam for the purpose of recalling the Lieutenant Governor or any member of the legislature. In addition, the bill would authorize the appropriation of $5 million for construction projects on Guam in fiscal year 1983, and would alter the date for transfer of federal property in the Trust Territory of the Pacific Islands

from October 1, 1982, until 90 days after the date of termination of the trusteeship.

5. Cost estimate:

	Millions
Estimated authorization level:	
Fiscal year:	
1983	$60
1984	20
1985	15
1986	-----
1987	-----
Estimated outlays:	
Fiscal year:	
1983	$60
1984	20
1985	15
1986	-----
1987	-----

The costs of this bill fall within budget function 800.

6. Basis of estimate: The above estimate includes the $5.15 million authorized for capital projects in Guam and for a Center for Caribbean Studies at the College of the Virgin Islands. It is assumed that the amount authorized will be appropriated. The estimate of annual outlays is based on historical spending patterns.

CBO has estimated the effects of the Economic Recovery Tax Act of 1981 on revenues to Guam and the Virgin Islands. In its analysis CBO has assumed that the impact of the Economic Recovery Tax Act on territorial tax receipts will be similar to the projected effects on federal tax receipts in general. The bill does not specify how a fiscal year 1983 grant would be calculated. Based on a draft of the Committee report language and information from the Committee staff, CBO has estimated the potential fiscal year 1983 grant as the difference between projected fiscal year 1983 revenues, and an estimate of what those revenues would have been in the absence of the tax bill. CBO's estimate of the fiscal year 1983 revenue losses incurred by Guam and the Virgin Islands as a result of the 1981 tax act is approximately $55 million. Fiscal year 1984 and 1985 grant levels have been estimated by comparing projected tax revenues for each fiscal year under the new act with an estimate of tax revenues based on the tax provisions in effect one year earlier. On this basis, CBO estimates grants totaling $20 million in fiscal year 1984 and $15 million in fiscal year 1985 would be necessary to cover revenue losses in those years. (If the 1983 authorization were estimated on the same basis as for 1984 and 1985—i.e., based on a one-year lag—the 1983 grant would be approximately $30 million.)

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Judy Walker.

10. Estimate approved by:

10. Estimate approved by James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes the following evaluation of

the regulatory impact which would be incurred in carrying out H.R. 5139.

The bill is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the provisions of the measure. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 5139.

Executive Communications

The committee requested formal agency recommendations on S. 1674, a measure similar to H.R. 5139, from the Department of the Interior, the Department of Justice, the Department of the Treasury, the U.S. Postal Service, and the Office of Management and Budget on October 5, 1981. The Departments of Justice, Treasury, and the Interior and the Office of Management and Budget did not submit formal agency reports on the legislation but representatives of the three Departments did present formal testimony at the October 21, 1981, hearing and their statements are set forth in the printed transcript of that hearing. The U.S. Postal Service did submit formal agency recommendations pursuant to the committee request, and their report is set forth below together with communications from the Department of the Interior and the Department of the Treasury received after the hearing in response to questions concerning the legislation raised during the hearing.

U.S. Postal Service,
Washington, D.C., October 19, 1981.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: This responds to your request for the views of the Postal Service on S. 1674, a bill to amend or repeal certain provisions of the organic acts applicable to the Virgin Islands, and for other purposes.

Our interest is limited to section 202 of the bill, which provides for cooperation by Customs and Postal Service officials with officials of the United States Virgin Islands in the collection of local excise taxes. The Postal Service has no objection to what we understand to be the intent of this provision, to authorize assistance by the Postal Service to the Virgin Islands similar to the assistance rendered to the Government of Puerto Rico under 48 U.S.C. § 741a (1976) and Domestic Mail Manual § 115.96. Such assistance would enable Virgin Islands tax collection officials to inspect the outside cover of parcels entering the Virgin Islands in the mails and to record the information thereon for purposes of collecting excise taxes payable at the time of importation for certain goods arriving through the mails.

As a technical matter, we believe that the language of section 202, which currently refers broadly to "the collection of excise taxes", should be drafted more narrowly to refer only to those excise taxes for which the Virgin Islands reasonably may look to the Postal Service for collection assistance, namely those imposed under section 405 of

the Act of March 12, 1980, Pub. L. No. 96–205, 94 Stat. 99 (48 U.S.C. § 1574 note), which are assessed at the time of importation. In place of the broad provision in present section 202 standing alone, we suggest an amendment to section 405 adding an additional sentence at the end reading as follows: "The officials of the Customs and Postal Services of the United States are directed to assist the appropriate officials of the United States Virgin Islands in the collection of these taxes." It may also be useful to repeal the related obsolete provisions found in the second proviso and the last sentence of section 4 of the Act of March 3, 1917, as enacted by the Act of June 24, 1932, 47 Stat. 333 (48 U.S.C. § 1395).

With these changes, the Postal Service would have no objection to the approval of S. 1674.

Sincerely,

W. ALLEN SANDERS,
Associate General Counsel,
Office of General Law and Administration.

DEPARTMENT OF THE TREASURY,
Washington, D.C., November 4, 1981.

Hon. LOWELL P. WEICKER, JR.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR WEICKER: I am responding to the request which you made during hearings on S. 1674, the Omnibus Territories Bill, for further analysis of the effect on territorial tax revenues of the tax reductions under the Economic Recovery Tax Act of 1981.

We estimate that the impact of these cuts over the next three years, relative to territorial tax collections in the absence of the tax law changes, and taking no account of tax increases due to inflation, will be as follows:

Liabilities

	Millions
Virgin Islands:	
Calendar year:	
1982	$12
1983	22
1984	32
1985	35
Guam:	
Calendar year:	
1982	9
1983	21
1984	30
1985	31

These estimates, which we developed with the staff of the Joint Committee on Taxation and which we have discussed with the Interior Department, assume 10 percent annual growth in tax collections in the absence of a tax cut. These estimates are similar to estimates made by the Virgin Islands and Guam.

The limited data available on American Samoan income levels and the sensitivity of their tax revenues to the investment behavior of a small number of corporate taxpayers make it difficult to estimate the impact of the tax cuts on American Samoa with any precision. Ameri-

can Samoa estimates that it will lose $0.3 million in 1982 as a result of the tax reductions.

The impact of the changes in U.S. tax law should be compared with the built-in tax increases due to inflation. With a progressive rate structure, increases in nominal income that move a taxpayer into a different tax bracket can dramatically increase his tax burden. Furthermore, with exemptions and deductions stated in fixed dollar terms, taxable income during a period of inflation rises more rapidly than inflation. Real income—the taxpayer's actual purchasing power—may stay the same or actually decline, but his tax liability increases in real terms as a result of the inflation of his income. Congress recently recognized the "unlegislated" tax increases arising from inflation by providing for the indexing of tax brackets beginning in 1985.

The enclosed table makes the comparison for the United States between the cumulative impact of inflation and the tax reductions enacted in the Economic Recovery Tax Act. The table takes account of the statutory rate reductions, the new savings incentives, the reduction in the marriage penalty, and all other changes in the Act that reduce individual tax liabilities. The table shows that bracket creep due to inflation will offset 84 percent of the tax cut in calendar year 1982, and approximately 60 percent of the tax cuts in 1983 through 1986.

Because of the close economic ties between the United States and the territories, inflation rates in the territories are generally close to the U.S. mainland rates. Given the lower average income levels and territorial taxpayers, the net impact of the tax cuts and inflation is likely to be a somewhat smaller real tax cut in the territories than in the United States.

If the Virgin Islands and Guam do not want to cut their income taxes, they can impose their own income surtax of up to 10 percent, and/or increase non-income based taxes. For example, the government of Guam has noted that an alternative to Federal tax loss reimbursement grants would be a locally enacted increase in Guam's gross receipts tax from 4 percent to 5 percent, which would increase revenues by approximately $10 million in 1983. Imposition of a 10 percent income tax surcharge in Guam would raise an additional $8 million in 1983. Together, these two measures would much more than offset the net change in Guam's income tax receipts in 1983 and 1984 which will result from the Economic Recovery Tax Act and inflation.

In the case of American Samoa, the local legislature has full authority over both territorial income taxes and non-income taxes. Thus, the legislature could choose to retain the income tax provisions in effect prior to the passage of the Economic Recovery Tax Act.

If, however, the territories can obtain additional funds from the Federal government to offset cuts in the U.S. income tax, they can avoid the hard choice between maintaining tax burdens at current levels and cutting government spending.

There may be good reasons for increasing the general appropriations to the territories, but the Economic Recovery Tax Act is not among them. On whatever grounds increased appropriations are justified, there is no reason why the increase should be indefinite in amount, as proposed under section 204 of S. 1674.

I hope that this explanation addresses the points raised in the hearings. I would be pleased to answer any further questions which you or the Senate Energy and Natural Resources Committee may have.

Sincerely,

A. W. GRANWELL,
International Tax Counsel.

Enclosure.

A COMPARISON OF THE INDIVIDUAL INCOME TAX REDUCTIONS OF THE ECONOMIC RECOVERY TAX ACT OF 1981 WITH BRACKET CREEP DUE TO INFLATION SINCE 1980

[Based on midsession review economic assumptions; in billions of dollars]

Year	Bracket creep due to inflation since 1980	Individual income tax reductions under ERTA
1981	9.3	−0.2
1982	24.2	−28.9
1983	46.3	−77.2
1984	70.7	−121.4
1985	96.7	−148.8
1986	126.3	−189.0

Source: Office of the Secretary of the Treasury, Office of Tax Analysis, Nov. 2, 1981.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., November 18, 1981.

Hon. LOWELL P. WEICKER, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR WEICKER: During the October 21, 1981, hearing on S. 1674, you asked that we provide "the specifics . . . as to the impact or effect of the budget cuts upon the territories."

To begin with, we would like to clear up a misunderstanding regarding the Department's willingness and ability to provide the Committee with estimates of the effect of budget and tax cuts on the territories. We were not only ready and willing to provide such information, but we did so at the beginning of the hearing. For the record, the amounts of the cuts for fiscal year 1982, by territory, as presented to the Committee on October 21, 1981, were as follows:

	Millions
Federal Program cuts:	
Virgin Islands	$12.6
Guam	10.0
American Samoa	5.5
Northern Marianas	4.0
Trust Territory	6.9
Total	39.0
Income tax cuts:	
Virgin Islands	14.1
Guam	9.4
American Samoa	.3
Total	23.8

Following the submission of the above estimates, candor compelled us to add several caveats regarding the reliability and probable revision of the data. Unfortunately, these caveats were apparently taken by you and by territorial representatives in attendance as signs

of our inability to supply any data. In fact, most of the territorial representatives subsequently provided substantially the same figures in their own testimony.

The above figures were supplied to us by the territories. We note that the Department of the Treasury has prepared income tax estimates which vary slightly from the territories' estimates. The Treasury's estimates were $12 million for the Virgin Islands, $9 million for Guam, and $.3 million for American Samoa.

We consider the effect of cuts in Federal programs and taxes in the territories to be of great importance and deserving of our continued attention. Therefore, we would like to outline our present and proposed approach to each issue (grants and taxes) separately.

FEDERAL GRANT PROGRAMS

Grants from Federal agencies are provided to the territories in exactly the same way as they are provided to the 50 states and the District of Columbia. They are not channeled through the Department of the Interior or any other central coordinating office. We do, of course, take a very special interest in grant programs for territories, and we maintain regular contact with the grant administration offices of all the Federal agencies that deal with the territories. Unfortunately, these offices are able to provide us with no more information than they provide the states and the territories. Initial estimates were guesses based on the first continuing resolution. These estimates are in fact the source of the data provided above.

The final effect of the budget cuts on each territory and state will not be known until well after the passage of departmental and agency appropriations bills and probably not until the close of the fiscal year. We are continuing our direct effort to obtain from the larger agencies the best and latest information on the effect of grant reductions in the territories. In addition, on October 13, 1981, (before the hearing), we again requested the territorial governments to provide us with their latest estimates on the extent and effect of the prospective cuts. By combining these sources of information, we expect, by the end of January 1982, to have and to provide to the Committee more up-to-date estimates of the effect on the territories of grant reductions. We emphasize that this does not mean the figures will be final at that time. We expect to continually revise them throughout the year.

With regard to our view of the role of the Federal government in limiting the impact of reductions in Federal grants on the territories, we are guided by two major principles: First, reductions in the Federal budget are necessary and will benefit all Americans by controlling inflation. Therefore, we would expect all Americans, including residents of the territories, to share in the sacrifices that these reductions will entail. Second, we are aware that the territories have more fragile economies and are more dependent on Federal grants than are the states. Thus, we consider it likely that some, although not all, grant reductions will have a disproportionately greater effect on the territorial governments and economies. We expect the territorial governments to identify these critical program cuts and we will help them to seek ways of alleviating the effects. When adequate information on the

actual effect of grant reductions becomes available, we will promptly review the situation.

FEDERAL INCOME TAX CUTS

The reductions in Federal income tax rates will have a negative effect on the revenues of those three territories that use the Federal income tax as a local tax: Guam, the Virgin Islands, and American Samoa. The effect of these income tax reductions on the territories is totally different from the effect of Federal program grant reductions for the following reasons:

(1) The taxes are collected by territorial governments from territorial residents. Thus, any reduction in tax rates or collections does not reduce Federal transfers to the territories. The result is, in fact, a reduction in transfers from the territorial private sector to the territorial public sector.

(2) Tax reductions are not, in their entirety, real reductions in resourse transfers but are, to a large extent, offsets to real increases in taxation resulting from the effect of inflation when it moves taxpayers to higher tax brackets ("bracket creep"). Treasury Department calculations indicate that the Economic Recovery Tax Act will bring about no significant reduction in effective tax rates for most taxpayers until mid-1983. Even then, the inflation rate will determine whether or not there is a real tax reduction. The higher the inflation rate, of course, the less chance of a real tax reduction.

(3) Territorial governments have legal authority to offset decreases in income tax revenues by imposing a surcharge. It is true that this authority, in Guam and the Virgin Islands, is limited to a 10 percent surcharge. Under most assumptions regarding inflation, however, a 10 percent surcharge will be more than enough to offset the real reduction in income tax rates to take effect through 1983. Furthermore, all territories exercise complete control over most other taxes on their residents (an advantage not shared by any state) and can, by local legislation, adjust or impose taxes (e.g. property, excise, death, gift, gasoline) to achieve a desired balance between government revenue and fiscal incentives.

The prospective revenue losses from income tax rate reductions do share one characteristic with losses from Federal grant reductions; they are impossible to quantify accurately until after the close of the fiscal year. Because changes in tax rates affect each taxpayer differently and because each taxpayer's return changes from year to year, there is no way of telling in advance with any degree of accuracy what the aggregate effect will be. Reliable figures will not be known, in fact, until several years hence when final returns have been filed, audits have been completed, and appeals have been exhausted.

Compounding this problem is the fact that the Economic Recovery Tax Act will probably affect corporate taxes to a greater extent than individual taxes in the territories. American Samoa and the Virgin Islands are heavily dependent on corporate taxes that are paid by only two or three companies. Meaningful projections of the effect of tax law changes on these companies require access to information not available even to territorial officials.

The above is not to say that improved estimates cannot be made during this year. Even for these estimates, however, recent base data must be available. We have requested Guam, the Virgin Islands, and American Samoa to provide revised estimates of income tax reductions and the base data and assumptions used to calculate them. If we are able to obtain this information from the territorial governments in a timely fashion, we will, by the end of January 1982, provide it to the Committee along with our own analyses and projections of the effects of the reductions on revenues.

In closing we would like to emphasize two points. First, we in Interior are well aware of the special needs of the territories and of our responsibility to interpret, support, and present these needs to the Executive Branch and the Congress. Second, we endorse the 20-year process advocated by this Administration and previous administrations and by the Congress to encourage self-government and economic self-sufficiency for the territories. We believe the territories have made good progress in the last few years in reducing dependence on the public sector and encouraging private sector growth, and we propose to build on that progress.

Sincerely,

DIANE K. MORALES,
Deputy Assistant Secretary
for Territorial and International Affairs.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rule of the Senate, changes in existing law made by H.R. 5139 as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ORGANIC ACT OF GUAM

(64 Stat. 384, as amended)

* * * * * * *

SEC. 7. [Any Governer of Guam may be removed from office by a referendum election in which at least two-thirds of the number of persons voting for Governor in the last preceding general election at which a Governor was elected, vote in favor of recall and in which those so voting constitute a majority of all those participating in the referendum election. The referendum election shall be initiated by the legislature of Guam following (a) a two-thirds vote of the members of the legislature in favor of a referendum, or (b) a petition for such a referendum to the legislature by registered voters equal the number to at least 50 per centum of the whole number of votes cast for Governor at the last general election at which a Governor was elected preceding the filing of the petition.]

(a) The people of Guam shall have the right of initiative and referendum, to be exercised under conditions and procedures specified in the laws of Guam.

(b) Any Governor, Lieutenant Governor, or member of the legislature of Guam may be removed from office by a referendum election in which at least two-thirds of the number of persons voting for such official in the last preceding general election at which such official was elected vote in favor of recall and in which those so voting constitute a majority of all those participating in such referendum election. The referendum election shall be initiated by the legislature of Guam following (a) a two-thirds vote of the members of the legislature in favor of a referendum, or (b) petition for such a referendum to the legislature by registered voters equal in number to at least 50 per centum of the whole number of votes cast at the last general election at which such official was elected preceding the filing of the petition.

* * * * * * *

PUBLIC LAW 96–205—MAR. 12, 1980

(94 Stat. 84, 89)

* * * * * * *

SEC. 405. Any excise taxes levied by the Legislature of the Virgin Islands may be levied and collected as the Legislature of the Virgin Islands may direct as soon as the articles, goods, merchandise, and commodities subject to said tax are brought into the Virgin Islands. *The officials of the Customs and Postal Services of the United States are directed to assist the appropriate officials of the United States Virgin Islands in the collection of these taxes.*

* * * * * * *

PUBLIC LAW 95–348—AUG. 18, 1978

(92 Stat. 487)

SECTION 1. (a)(1) For grants to the government of Guam for the rehabilitation, upgrading, and construction of public facilities, there is hereby authorized to be appropriated to the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") $13,868,000 for fiscal year 1979, and $20,000,000 thereafter, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs from October 1978 price levels as indicated by engineering cost indexes applicable to the types of construction [involved.] *involved, and $5,000,000 for fiscal year 1983.*

* * * * * * *

PUBLIC LAW 96–597—DEC. 24, 1980

(94 Stat. 3477, 3478)

* * * * * * *

SEC. 402. (a) Notwithstanding any other provision of law, subject to valid existing rights, and subject to subsection (b) of this section, all right, title, and interest of the Government of the United States in personal property situated in the Trust Territory of the Pacific Islands and of the government of the Trust Territory of the Pacific

Islands in personal property wherever located shall be transferred, without reimbursement, [by October 1, 1982.] *by a date not later than ninety days following termination of the trusteeship agreement governing the administration of the Trust Territory of the Pacific Islands*, to the government of the Northern Mariana Islands, Palau, the Marshall Islands, or the Federated States of Micronesia according to a list of distribution established by the High Commissioner of the Trust Territory of the Pacific Islands in consultation with the recipient government.

(b) Personal property referred to in subsection (a) of this section shall be transferred upon declaration by the High Commissioner of the Trust Territory of the Pacific Islands that such property is surplus to the needs of the government of the Trust Territory of the Pacific Islands, which declaration shall be approved, if applicable, by the head of the agency of the Government of the United States having administrative responsibility for the property.

(c) If no government exists in Palau at the time of enactment of this section that is capable of receiving title to such property in its own name, the government of the Trust Territory of the Pacific Islands shall hold such property in trust for the prospective government of Palau until such government is established.

* * * * * * *

PUBLIC LAW 96–597—DEC. 24, 1980

(94 Stat. 3477, 3483)

* * * * * * *

SEC. 607. (a) In order to assist the governments of Guam and the Virgin Islands in eliminating general fund deficits, there is authorized to be appropriated to the Secretary of the Interior for payment to Guam not to exceed $15,000,000 for fiscal year 1982, and $11,000,000 for fiscal year 1983, $7,500,000 for fiscal year 1984, and $4,000,000 for fiscal year 1985; and for payment to the Virgin Islands not to exceed $12,000,000 for fiscal year 1982, $9,000,000 for fiscal year 1983, $6,000,000 for fiscal year 1984, and $3,000,000 for fiscal year 1985.

[(b) The Governors of Guam and the Virgin Islands shall each submit a plan for approval to the Secretary of the Interior in consultation with the Secretary of the Treasury which is designed to eliminate the respective territory's general fund deficits by the beginning of fiscal year 1986. Such plan shall provide for—

[(1) implementation of an effective budgeting and accounting system;

[(2) realistic revenue and expenditure projections which will progressively reduce current year general fund deficits and result in a balanced general fund budget no later than the beginning of fiscal year 1986;

[(3) financing of accumulated general fund deficits;

[(4) quarterly goals and timetables for implementing the plan. The plan shall also indicate that the Governor has the necessary authority to implement the plan.

[(c) Not more than thirty days after the close of each quarter which occurs after the plan required under subsection (a) of this section has been approved by the Secretary of the Interior in consultation with the Secretary of the Treasury and through the close of fiscal year 1985, the respective Governor shall submit a report to the Secretary of the Interior and the Secretary of the Treasury, certified by the respective government comptroller, describing in detail the success or failure of such territory in meeting the goals and timetables described in such plan.

[(d) No payment shall be made under this title until the plan required under this section has been approved by the Secretary of the Interior in consultation with the Secretary of the Treasury. Before making any payment under this title after such plan has been approved, the Secretary shall determine whether the respective territory is meeting the goals and timetables prescribed in such plan. If the Secretary determines that such territory is not meeting such goals or timetables, he shall withhold payments otherwise due such territory until he determines that such goals and timetables are being met.]

(b) The Governors of Guam and the Virgin Islands shall, as a condition for a grant pursuant to subsection a of this section, submit a plan which is designed to eliminate the respective territory's general fund deficit by the beginning of Fiscal Year 1987 to the Secretary of the Interior. Within sixty days after he has received such a plan, the Secretary of the Interior shall transmit the plan, together with his comments and recommendations to the Congress. The plan shall provide for—

(1) implementation of an effective budgetary and accounting system;

(2) realistic revenue and expenditure projections which will progressively reduce current year general fund deficits and result in a balanced general fund budget no later than the beginning of fiscal year 1987;

(3) financing of accumulated general fund deficits;

(4) quarterly goals and timetables for implementing the plan. The plan shall also indicate that the Governor has the necessary authority to implement the plan

(c) Not later than thirty days after the close of each quarter which occurs after the plan has been transmitted to the Congress, the respective Governor shall submit a report to the Secretary of the Interior and the Congress describing in detail the success or failure of such territory in meeting the goals and timetables described in such plan.

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Calendar No. 533

97TH CONGRESS
2d Session

SENATE

REPORT
No. 97-373

RECLAMATION REFORM ACT OF 1982

APRIL 29 (legislative day, APRIL 13), 1982.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

ADDITIONAL AND SUPPLEMENTAL VIEWS

[To accompany S. 1867]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1867) to amend and supplement the acreage limitation and residency provisions of the Federal reclamation law, as amended and supplemented, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

That this Act shall amend and supplement the Act of June 17, 1902, and Acts supplementary thereto and amendatory thereof (43 U.S.C. 371), hereinafter referred to as the "Federal reclamation law".

DEFINITIONS

SEC. 2. As used in this Act—

(a) The term "district" means any individual or any legal entity established under State law which has entered into a contract or is eligible to contract with the Secretary for irrigation water.

(b) The term "full cost" means an annual rate as determined by the Secretary that shall amortize the construction costs properly allocable to irrigation facilities in service, plus all operation and maintenance deficits funded, less payments, over such periods as may be required under reclamation law or applicable contract provisions, with interest on both accruing from the date of enactment on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to the date of enactment. The interest rate used pursuant to this Act shall be determined by the Secretary of the Treasury on the basis of the computed average interest rate payable by the Treasury upon its marketable

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public obligations which are neither due nor callable for redemption for fifteen years from the date of issuance: *Provided*, That normal operation, maintenance, and replacement charges will be collected in addition to the full cost charge.

(c) The term "individual" means any natural person, including his or her spouse, and including other dependents thereof within the meaning of the Internal Revenue Code (26 U.S.C. 152).

(d) The term "irrigation water" means water made available for agricultural purposes from the operation of reclamation project facilities pursuant to a contract with the Secretary.

(e) The term "landholding" means total irrigable acreage of one or more tracts of land owned or operated under a lease which is served with irrigation water pursuant to a contract with the Secretary.

(f) The term "qualified recipient" means an individual who is a citizen of the United States or a resident alien thereof or any legal entity established under State or Federal law which benefits twenty-five such individuals or less.

(g) The term "limited recipient" means any legal entity established under State or Federal law benefiting more than twenty-five individuals.

(h) The term "Secretary" means the Secretary of the Interior.

SEC. 3. (a) The provisions of the Federal reclamation laws shall remain in full force and effect, except to the extent such laws are amended by, or are inconsistent with, this Act.

(b) Nothing in this Act shall repeal or amend any existing statutory exemptions from the acreage limitation of the Federal reclamation law.

ACREAGE LIMITATION

SEC. 4. (a)(1) Notwithstanding any other provisions of law to the contrary, irrigation water may be delivered to a qualified or limited recipient for use in the irrigation of a landholding of not more than two thousand and eighty acres of class I land, or theequivalent thereof: *Provided*, That not more than one thousand two hundred and eighty acres of such landholding may be owned by a qualified recipient and that not more than six hundred and forty acres of such landholding may be owned by a limited recipient.

(2) Lands leased for a term of one year or less for the purpose of water management and conservation in years of inadequate project water supply shall not be considered as part of a landholding solely because of having been so leased.

(b) Irrigation water may be delivered to lands leased in excess of a landholding of two thousand and eighty acres or the equivalent thereof as described in subsection (a), only if full cost as defined in subsection 2(b) of this Act is paid for such water as is assignable to those lands leased in excess of a landholding of one thousand two hundred and eighty acres in the case of a qualified recipient or lands leased in excess of a landholding of six hundred and forty acres in the case of a limited recipient: *Provided*, That "full cost" shall not be applied to excess lands under recordable contract.

(c) In determining the extent of a landholding the Secretary shall add to any landholding held directly by a qualified or limited recipient that portion of any landholding held indirectly by such qualified or limited recipient which benefits that owner in proportion to that ownership.

EQUIVALENCY

SEC. 5. Wherever an acreage limitation is imposed by the Federal reclamation law, including this Act, the Secretary, upon the request of a contracting entity, shall designate lands under the applicable acreage limitation within a district classified as having class I productive potential or the equivalent thereof in other lands of lesser productive potential. Standards and criteria for determination of land classes pursuant to this authority shall take into account all factors which significantly affect the economic feasibility of irrigated agriculture, including but not limited to, soil characteristics, crop adaptability, costs of crop production, and length of growing season.

RESIDENCY NOT REQUIRED

SEC. 6. Notwithstanding any other provision of law, irrigation water made available from the operation of reclamtion project facilities shall not be withheld from delivery to any project lands for the reason that the owners, lessees, or operators do not live on or near them.

RECORDABLE CONTRACTS

SEC. 7. (a) (1) Irrigation water made available in the operation of reclamation project facilities constructed after the enactment of this Act may not be delivered for use in the irrigation of lands held in excess of the acreage limitations imposed by the Federal reclamation law, including this Act, unless and until the owners thereof shall have executed a recordable contract with the Secretary.

(2) Lands held in excess of the acreage limitations imposed by the Federal reclamation law, including this Act, which on the date of enactment of this Act are or are capable of receiving delivery of irrigation water made available by the operation of existing reclamation project facilities may receive such deliveries only: (i) if the disposal of the owner's interest in such lands is required by an existing recordable contract with the Secretary, or (ii) if the owners of such lands have requested that a recordable contract be executed by the Secretary.

(b) The recordable contracts referred to in subsection (a) shall require the disposal of interests in excess lands within a reasonable time to be established by the Secretary, but shall not exceed ten years after the recordable contract is executed by the Secretary in accordance with terms and conditions required by the Federal reclamation law generally.

(c) Recordable contracts existing on the date of enactment shall be amended at the request of the landowner to conform with the acreage limitations contained in this Act: *Provided*, That the time period for disposal of excess lands specified in the existing recordable contract shall not be extended except as provided in subsection (e).

(d) All recordable contracts covering excess lands sales shall provide that a power of attorney shall vest in the Secretary to sell any excess lands not disposed of by the owners thereof within the period of time specified in the contracts. In the exercise of that power, the Secretary shall sell such lands through an impartial selection process only to qualified purchasers according to such reasonable rules and regulations as he may establish: *Provided*, That the Secretary shall recover for the owner the fair market value of the land and improvements thereon unrelated to irrigation water deliveries.

(e) The period of time for which the disposal of excess lands may have been required under recordable contracts executed under the Federal reclamation law, including this Act, are hereby, and in the future shall be, extended for the period of time in which the Secretary shall have withheld the processing or approval of the disposition of such lands, whether he may have been compelled to do so by court order or whether he may have declined to do so for other reasons.

(f) Excess lands which have been or may be disposed of in compliance with the Federal reclamation law, including this Act, shall not be considered eligible to receive irrigation water unless—

(1) they are held by nonexcess owners; and

(2) in the case of disposals made after the date of enactment of this Act, their title is burdened by a covenant prohibiting their sale, for a period of ten years after their original disposal to comply with the Federal reclamation law, including this Act, for values exceeding the sum of the value of newly added improvements and the value of the land as increased by market appreciation unrelated to the delivery of irrigation water. Upon expiration of the terms of such covenant, the title to such lands shall be freed of the burden of any limitations on subsequent sale values which might otherwise be imposed by the operation of section 432e of title 43, United States Code.

CORPS OF ENGINEERS PROJECTS

SEC. 8. (a) Notwithstanding any other provision of law to the contrary, neither the acreage limitation provisions nor the other provisions of the Federal reclamation laws, including this Act, shall be applicable to lands receiving benefits from Federal water resources projects constructed by the United States Army Corps of Engineers, unless—

(1) the project has, by Federal statute, explicitly been designated, made a part of, or integrated with a Federal reclamation project; or

(2) the Secretary, pursuant to his authority under the Federal reclamation law, has provided project works for the control or conveyance of an agricultural water supply for the lands involved.

(b) Notwithstanding any other provisions of this section to the contrary, obligations that require water users, pursuant to contracts with the Secretary, to repay the share of construction costs and to pay the share of the operation and mainte-

nance and contract administrative costs of a Corps of Engineers project which are allocated to conservation storage or irrigation storage shall remain in effect.

REPAYMENT OF CONSTRUCTION CHARGES

SEC. 9. (a) The acreage limitation provisions of the Federal reclamation law shall cease to apply to any part of a landholding upon completion of the repayment by any contracting entity of the amount of any construction costs required to be repaid by such contracting entity (or by a person within the district pursuant to a contract existing on the date of enactment of this Act) by the terms of any contracts with the Secretary relating to the delivery of water supplies to such part of a landholding for agricultural use: *Provided*, That where any such contract may be entered into pursuant to the authority of the Rehabilitation and Betterment Act (Act of October 7, 1949, 63 Stat. 724, as amended), the contracting entity shall have the additional option of adopting a form of repayment consistent with section 5(c)(2) of the Small Reclamation Projects Act of 1956 (Act of August 6, 1956, 70 Stat. 1044, as amended) and if such form of repayment is adopted, the acreage limitation provisions of the Federal reclamation law shall not apply solely as a result of the indebtedness under such contract.

(b) The Secretary shall provide, upon request of any owner of a landholding for which repayment has occurred, a certificate acknowledging that the landholding is free of the acreage limitation of the Federal reclamation law. Such certificate shall be in a form suitable for entry in the land records of the county in which such landholding is located. Any certificate issued prior to the date of enactment of this Act is hereby ratified.

(c) Nothing in this Act shall be construed as authorizing or permitting lump sum or accelerated repayment of construction costs, except in the case of a repayment contract which is in effect upon the date of enactment of this Act and which provides for such lump sum or accelerated repayment by an individual or district or except as provided in subsection (d) of this section.

(d) The Secretary is authorized to negotiate with such contracting entity to conform the terms of any such contract to permit lump sum or accelerated repayment if the Secretary finds that the amount of outstanding indebtedness is less than 5 per centum of the total repayment obligation associated with such contract and that a pattern of family farming has been established in the project service area.

RELIGIOUS OR CHARITABLE ORGANIZATIONS

SEC. 10. An individual religious or charitable enttiy or organization (including but not limited to a congregation, parish, school, ward, or chapter) which is exempt from taxation under section 501 of the International Revenue Code of 1954, as amended, and which owns, operates, or leases any lands within a district shall be treated as a person under the provisions of this Act regardless of such entity or organization's affiliation with a central organization or its subjugation to a hierarchical authority of the same faith and regardless of whether or not the individual entity is the owner of record if—

(a) the agricultural produce and the proceeds of sales of such produce are directly used only for charitable purposes;

(b) said land is operated by said individual religious or charitable entity or organization (or subdivisions thereof); and

(c) no part of the net earnings of such religious or charitable entity or organization (or subdivision thereof) shall inure to the benefit of any private shareholder or individual.

EXEMPTIONS

SEC. 11. Neither the limitations and restrictions imposed by this Act nor any other provision of the Federal reclamation law shall prohibit the delivery of irregation water—

(a) so long as the lands are held by an individual or corporate trustee in a fiduciary capacity for a beneficiary or beneficiaries whose interests in the lands served do not exceed the limits imposed by the Federal reclamation law including this Act;

(b) when the lands served receive only a temporary, not to exceed one year, supply made possible as a result of—

(1) an unusually large water supply not otherwise storable for project purposes; or

(2) infrequent and otherwise unmanaged floor flows of short duration:

(c) when the lands are acquired by involuntary foreclosure, or similar involuntary process of law, by bona fide conveyance in satisfaction of a mortgage, by inheritance, by devise: *Provided*, That if after acquisition, such landsare not qualified under the Federal reclamation law, including this Act, they shall be furnished temporarily with a water supply for a period not exceeding ten years from the effective date of such acquistion;

(d) to isolated tracts found by the Secretary to be economically farmable only if they are included in a larger farming operation but which may, as a result of their inclusion in that operation, cause it to exceed the acreage limitations of the Federal reclamation law, including this Act;

(e) to lands which will receive a substitute water supply and will be required by the Secretary in his contract with the district to reduce ground water pumping in equal quantity from aquifers in the project area as a condition of receiving substitute water from a Federal reclamation project.

CONTRACT REQUIRED

SEC. 12. Irrigation water temporarily made available from reclamation facilities in excess of ordinary quantities not otherwise storable for project purposes or at times when such water would not have been available without the operations of those faciilties, may be used for water quality, irrigation, municipal, or industrial purposes only to the extent covered by a contract requiring payment for the use of such water, executed in accordance with the Reclamation Project Act of 1939, or other applicable provisions of the Federal reclamation laws.

VALIDATION

SEC. 13. Any non-Federal party to a repayment contract with the Secretary relating to a reclamation project may obtain validation of any provisions of such contract relating to the acreage limitation available to such party pursuant to such contract or under the Federal reclamation law by making application therefor to the Secretary in writing within three years from the date of enactment of this Act. The Secretary shall review each such application and within ninety days from the date on which he receives such application shall transmit it to the Congress together with his comments and recommendations. Unless the Congress by joint resolution disapproves the application within ninety days from the date on which it receives the Secretary's transmittal, the application shall be approved and the provisions shall be considered to be validated.

CONSENT TO SUE

SEC. 14. In addition to any other remedy available in law or equity, any party to a contract with the Secretary providing for water service or for the repayment of the construction costs of Federal reclamation project facilities used to store and deliver irrigation water may bring an action in the United States district court for the district in which the project facilities are located, and only in such district, for mandatory injunctive or other appropriate relief to adjudicate, confirm, validate, or decree the contractual right of any person or entity, including but not limited to any contracting entity, who is the beneficiary of any such contract and to reform such contract in accordance with the terms of any written representation concerning the application or interpretation of the Federal reclamation law, including this Act, or contracts made by the Secretary or his representative to such party or his predecessor in interest. Exclusive jurisdiction for such suit is hereby vested in the United States district court. In the case of a written representation, if the court finds, on the basis of the evidence submitted, that the party would not have entered into the contract but for the written representations made by the Secretary or his representative, which were relied on by those using such irrigation water, then the court shall order the Secretary to reform the contract to conform with the representations, and the contract, as reformed, shall be considered valid as of the date of the written representation.

ADMINISTRATIVE PROVISIONS

SEC. 15. (a) The Secretary may prescribe regulations and shall collect all data necessary to carry out the provisions of this Act and other provisions of the Federal reclamation law.

(b) Section 3 of the Act of July 7, 1970 (43 U.S.C. 425b) is amended by striking the phrase "for a period not to exceed twenty-five years" following the term "project water".

(c) Any nonexcess land which is acquired into excess status pursuant to involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of mortgage, inheritance, or devise, may be sold at its fair market value without regard to any other provision of this Act or to section 46 of the Act entitled "An Act to adjust water rights charges, to grant certain relief on the Federal irrigation projects, and for other purposes," approved May 25, 1926 (43 U.S.C. 423e); Provided, That if the status of mortgaged land changes from nonexcess into excess after the mortgage is recorded and is subsequently acquired by the lender by involuntary foreclosure or similar involuntary process of law, by bona fide conveyance in satisfaction of the mortgage, such land may be sold at its fair market value.

(d) Beginning October 1, 1982, there are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

(e) The Secretary is hereby authorized and directed to amend any provision of any contract between the Secretary and another party existing upon the date of enactment of this Act which is inconsistent with the provisions of this Act but only at the request of said other party.

(f) The Act of May 26, 1926, Appointment of Commissioner of Reclamation (44 Stat. 657) is amended by adding the words "by and with the advice and consent of the Senate" after the word "President".

LEASING REQUIREMENTS

SEC. 16. (a) Notwithstanding any other provision of the Federal reclamation law, including this Act, lands which receive irrigation water may be leased only if the lease instrument is—

(1) written; and

(2) for a term not to exceed ten years, including any exercisable options: *Provided, however,* That with the prior approval of the Secretary, leases of lands for the production of perennial crops having an average life of more than ten years may be for periods of time equal to the average life of the perennial crop but in any event not to exceed twenty-five years. In addition, the Secretary shall be provided with a certificate signed by the lessee which contains a legal description of the leased land, including a statement of the number of acres leased, the term of the lease, and a certification that the rent paid reflects the reasonable value of the irrigation water to the productivity of the land.

(b) Any lease in effect as of January 1, 1982, shall be required to comply with the provisions of this Act within ten years of enactment of this Act.

(c) Lessees holding lands in excess of the acreage limitation of this Act or of any other provisions of the Federal reclamation law under the provisions of a valid written lease effective as of January 1, 1982, shall be required to comply with the appropriate acreage limitation within ten years of enactment of this Act.

REPORTING

SEC. 17. Any contracting entity subject to the acreage limitation of the Federal reclamation law shall compile and maintain such records and information as the Secretary deems reasonably necessary to implement this Act and the Federal reclamation law. On a date set by the Secretary following the date of enactment of this Act, and annually thereafter, every such contracting entity shall provide in a form suitable to the Secretary such reports on the above matters as the Secretary may require.

PURPOSE

As reported, S. 1867 is the culmination of extensive effort on the part of both Houses of Congress and reflects previous Committee as well as floor activities seeking to reconcile 80 years of history and law

to the current practical considerations of farm practices and economics. As amended, S. 1867 provides a modern statement of Congressional policy on the programs and related administrative efforts carried out pursuant to the Federal reclamation law. In addition, the measure responds directly to many of the concerns previously expressed by reclamation project farmers for updating certain provisions of the reclamation law.

Summary of Major Provisions

As amended, S. 1867 addresses several major issues related to the reclamation program and in some instances would mandate significant departures from past or present practice. Major issues and related provisions of the bill are briefly described as follows:

FULL COST

Section 2 defines the full cost which will be paid by recipients of irrigation water when lands are leased in excess of the overall ownership/leasing limitation set forth in the bill. Full cost includes interest at the rate of the average outstanding United States Treasury obligations which are neither due nor callable for 15 years.

ELIGIBILITY

Section 2 establishes that a recipient of water for irrigable land (or "qualified recipient") would be an individual along with his spouse and dependents or a legal entity benefiting 25 individuals or less. A "limited recipient" would be any legal entity benefiting more than 25 individuals.

ACREAGE LIMITATION

Section 4 raises the basic ownership acreage limitation from 160 acres to 1,280 for a qualified recipient and to 640 acres for a limited recipient. An overall combined ownership and leasing acreage limitation of 2,080 acres is established for all recipients. Lands leased below the overall limitation are eligible to receive irrigation water without paying full cost. If lands are leased in excess of the overall limitation, full cost is applied to all lands leased in excess of the ownership limitations (e.g., 1,280 acres for a qualified recipient; 640 acres for a limited recipient).

EQUIVALENCY

Section 5 requires the application of the acreage equivalency concept to lands of lesser productive potential than Class I lands upon the request of a contracting entity.

RESIDENCY

Section 6 clarifies that residency is not a requirement of Federal reclamation law.

RECORDABLE CONTRACTS

Section 7 provides requirements for recordable contracts for the disposal of lands in excess of the acreage limitations and directs the sale of excess lands by impartial means for which a power of attorney

has been vested in the Secretary at the time of expiration of the recordable contract.

PAYOUT

Section 9 provides that the acreage limitations imposed by Federal reclamation law will cease to apply upon repayment of construction costs owed to the Federal Government by the water users of a reclamation project. Lump-sum or accelerated payments are permitted only pursuant to existing contract provisions or after 95 percent of construction costs have been paid and a pattern of family farms has been established.

SPECIAL EXEMPTIONS

Sections 8 and 11 provide that the limitations of Federal reclamation law are not applicable to Corps of Engineers projects, except under circumstances set forth in the statute, nor to certain other special circumstances.

Background and Need

The basic Federal reclamation law was enacted in 1902 (32 Stat. 388). It has been frequently amended and updated since, and the body of statutory law presently referred to as "the Federal reclamation law" fills three thick volumes encompassing all or parts of hundreds of individual public laws.

The initial purpose of the Reclamation Act, which was an outgrowth of the earlier Homestead and Desert Land Entry Acts, was to establish a program of Federal financial assistance for water resource development projects which were necessary if settlers were to establish irrigated farms on the arid public lands west of the hundredth meridian. The reclamation program was carried out initially by the Reclamation Service, which is now the Bureau of Reclamation in the Department of the Interior.

The program has evolved through the decades and is now a major water resource program involving major river basin development projects providing hydroelectric power, municipal and industrial water supply, fish and wildlife conservation, flood control, and public recreation in addition to the original irrigation purpose.

Nevertheless, irrigated agriculture continues to be a principal and substantial aspect of the reclamation program. In 1979, the reclamation program supplied a full water supply to nearly 5 million acres and a partial or "supplementary" water supply to over 6 million acres. This acreage is distributed over 214 operating reclamation projects and about 153,000 individual farms. It represents about 3 percent of the Nation's farmland and 25 percent of its irrigated farmland. The gross value of crops from reclamation farms in 1980 was about $7.4 billion.

The 1902 Act has been amended on numerous occasions. Section 46 of the Omnibus Adjustment Act of 1926 (44 Stat. 636) contains the latest acreage limitaiton provisions, and, as the last legislative enactment in this area, it provides the basis for administration of the acreage limitation provisions of Federal reclamation law. These provisions place a limit of 160 acres on the quantity of irrigable land in a single ownership to which Federal reclamation project water may be supplied. These provisions have been interpreted and enforced to permit water deliveries to 320 acres of irrigable land owned jointly by a

husband and wife. Non-excess land is considered to be all irrigable land that can be served in a project service area not in excess of 160 acres (320 acres for a husband and wife) in the ownership of one individual. However, it should be noted that the Congress has legislatively exempted certain reclamation projects from this limit.

Under modern reclamation law the irrigation water users sign contracts with the Secretary of the Interior agreeing to repay the portion of the project investment costs allocated to the irrigation function over a fixed period (usually 40 years) without interest. In most instances, moreover, the repayment is limited to an amount less than the full irrigation allocation which is the computed "repayment capacity" of the farmers, and the costs in excess of that capability are returned to the Treasury by electric power or municipal water revenues from Bureau projects.

Excess land is defined as all the irrigable land owned by one landowner within the project service area in excess of the acreage that constitutes the landowners non-excess holding. The owner of excess land is required to designate from his holdings the land he wishes to have considered non-excess and thereby receive a project water supply. Excess lands are not eligible to receive a project water supply unless the owner takes certain actions regarding them.

Excess lands are eligible to receive a project water supply if the owner places them under a recordable contract agreeing to dispose of the excess lands covered by the contract within a specified period to eligible non-excess owners at a price that does not reflect the value of the project benefits accruing to that land.

Non-excess land is not subject to the same restrictions and limitations as is excess land. Non-excess land can be sold by the owner at any price obtainable and will continue to be eligible for a project water supply provided that the lands acquired do not become excess in the hands of the buyer.

As noted above, the acreage limitation has remained unchanged from the original Reclamation Act of 1902—160 acres per individual owner or 320 acres per husband and wife. Many advocates believe that this limit is not viable in today's economy and that it must be increased to provide a decent standard of living for reclamation land farmers.

Reclamation law does not specifically address the issue of leasing of lands receiving reclamation water. There are at the present time no general prohibitions against, or limits on, the leasing of project lands. An individual can own 160 acres of land and receive a project water supply. He can also receive a project water supply for all of the land which he leases if that land is otherwise eligible to receive project water.

The original 1902 Act required that a landowner be a resident on or in the neighborhood of the land in order to be eligible to receive a project water supply. The Omnibus Adjustment Act of 1926 does not contain provisions requiring an individual to reside on or near the land in order to be eligible to receive water. The Department of the Interior has not enforced a residency requirement on landowners since passage of the 1926 Act. This departmental position was challenged in Federal court when a Federal district court held that residency was a requirement of Federal reclamation law. On appeal, however, the suit was dismissed for lack of standing. (*Yellen* v. *Andrus* 352 F.Supp. 1300; 595 F.2d 525 (9th Cir. 1979).)

Based on the holding in *United States* v. *Tulare Lake Canal Co.*, 535 F.2d 1093 (9th Cir. 1976), the Department of the Interior believes that section 8 of the Flood Control Act of 1944, which provides that on any dam or reservoir project built by the U.S. Army Corps of Engineers which may be "utilized for irrigation purposes, the Secretary of the Interior is authorized to construct, operate, and maintain, under the provisions of Federal reclamation laws . . ., such additional works in connection therewith as he may deem necessary for irrigation purposes.", requires the Department to impose acreage limitations on landholdings which utilize water obtained from Corps projects through diversion facilities whether funded by the Federal government or privately financed. Irrigators who have financed and constructed their own diversion and delivery systems disagree with the Department's interpretation. They claim that section 8 was not intended to and does not by itself, subject them to either the acreage limitations or other provisions of Federal reclamation law.

A large number of repayment contracts have been entered into over the years which provide for the termination of acreage limitations after the contractual obligations have been fully repaid by the contracting entity, or in some cases, by an individual. Twenty-two contracts containing such payout provisions have been ratified by Congress. However, the *Tulare* decision ruled that such payout provisions are invalid. Therefore, the status of those 67 other contracts containing payout provisions which have not been ratified by the Congress is unclear.

Equivalency is a concept developed in the 1950's to assist farms on reclamation land which is qualitatively less productive than lands held by other owners. Equivalency relates the most productive land, designated Class I, to less productive lands classified II, III, or IV. A larger acreage entitlement is allowed for lower classes of land to enable an equivalent productivity to Class I land, thereby alleviating any competitive disadvantage. The concept has been authorized by Congress on a project-by-project basis, but is not currently applicable to all projects, particularly those authorized before 1950.

As noted above, reclamation water users repay a portion of the project investment costs over a fixed period of time without interest. Considerations in the application of a higher repayment formula include the benefit accruing to the landowner from increased ownership and leasing options, ability to pay, effect on future projects, effect on the viability of existing farms, fair return to the Government, and national versus local benefits, among other factors.

In general, the Bureau of Reclamation and the Secretary have interpreted Reclamation law on a case-by-case basis and through a series of legal opinions and Secretarial instructions. On August 9, 1976, pursuant to a case brought by the National Land for People, a nonprofit organization, the U.S. District Court ruled that the Bureau had not complied with the Administrative Procedures Act and enjoined the approval of sales of excess lands in the Westlands Irrigation District pending promulgation of rules and regulations.

On August 25, 1977, the Bureau of Reclamation published proposed regulations covering the administration of the reclamation law. The regulations were believed by many Western irrigation interests to be severe interpretations of the law, and in several respects were in contradiction to current administrative practice.

Opponents of the regulations successfully had the procedure enjoined pending preparation of an environmental impact statement and a draft EIS was circulated by the Carter Administration. Secretary Watt suspended the comment period pending review by the Reagan Administration. On July 21, 1981, the comment period was resumed and extended through December 31, 1981.

A major purpose of S. 1867 is to provide a modern policy expression regarding Federal reclamation law in order to resolve the many controversies which would otherwise result from the implementation of regulations based upon current law.

Legislative History

During the 95th Congress, several measures to amend reclamation law were introduced. Hearings were held by the Committee on Energy and Natural Resources on April 12 and 13, 1978. Consideration of the legislation was not completed prior to adjournment.

In the 96th Congress, measures were introduced in both the House and Senate and hearings were held. On September 14, 1979, following 2 days of floor debate the Senate bill was forwarded to the House by a vote of 47 to 23. Once again, Congress adjourned prior to final consideration.

In the 97th Congress, S. 1867 was introduced on November 18, 1981. Hearings were held before the full Committee in Washington, D.C. on December 10, 1981, and in Boise, Idaho, on January 11, 1982.

A similar measure, H.R. 5539, was reported by the House Committee on Interior and Insular Affairs on March 15, 1982, and is presently pending further action.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on April 21, 1982, by majority vote of a quorum present, recommended that the Senate pass S. 1867, if amended as described herein:

The roll call vote on reporting the measure was 18 yeas, 1 nay, as follows:

YEAS	NAYS
McClure	Metzenbaum [1]
Hatfield	
Domenici	
Wallop	
Warner	
Humphrey	
Murkowski	
Nickles	
East	
Heinz	
Jackson	
Johnston [1]	
Bumpers	
Ford	
Matsunaga [1]	
Melcher	
Tsongas [1]	
Bradley	

[1] Indicates voted by proxy.

Committee Amendments

The Committee amended S. 1867 to strike all after the enacting clause and insert a substitute.

Aside from technical, clarifying, and conforming amendments, the Committee's substitute text eliminated the necessity for the three titles in the original bill by adopting a "one-track system" and making the following changes (section numbers refer to the Committee substitute):

Section 3(g) was added to define the term "limited recipient" as a legal entity benefiting more than 25 individuals.

Section 4, relating to acreage limitations, was amended to reduce the overall combined ownership and leasing limitation from 3,200 acres to 2,080 acres. The ownership limitation was reduced from 1,600 acres to 1,280 acres for a qualified recipient and set at 640 acres for a limited recipient. A proviso was added to exclude excess lands under recordable contracts from the full cost provisions.

The Committee deleted a section of the original text of S. 1867 which described a technical computation of a duty of water which would be used in applying the full cost provisions of the bill due to a potential conflict between Federal and State law. The Committee expects that the Secretary will administratively adopt procedures which will effectively implement the full cost provisions.

Section 7(b) was added to clarify that both existing and future recordable contracts may not be for periods longer than 10 years.

Section 7(c) adds language which allows the amendment of existing recordable contracts to conform to the new acreage limitations only.

Section 7(f)(2) was amended to clarify that anti-speculation covenants will be required on titles to excess lands transferred after the date of this Act.

Section 8 was amended to delete a subsection which created ambiguity in the exemption for Corps of Engineers projects, and to add a clarification to continue obligations for the repayment of certain construction, operation, maintenance and administrative costs allocated to conservation or irrigation storage.

Section 9 was amended to restrict accelerated or lump-sum repayment of construction charges to those instances in which such payments are provided for in existing contracts, whether made by a district or an individual. Lump-sum or accelerated repayments, where not allowed by existing contracts, will be allowed only when the outstanding indebtedness is less than 5 percent and a pattern of family farms has been established in the area.

Section 9(a) was amended to limit the applicability of the provisions regarding the Rehabilitation and Betterment Act to future loans.

Section 9(b) was amended to ratify any certificate issued prior to the date of enactment of this Act.

Section 10 was amended to clarify that individual religious or charitable entities or organizations are to be treated as persons under the provisions of this Act if certain tests are met.

Section 11(c) was amended to clarify an exemption for lands which receive a substitute water supply upon the condition that groundwater pumping is reduced in equal quantity.

Section 13 was amended to limit the availability of the validation procedure to provisions of repayment contracts with the Secretary. Applications for validation must be made within 3 years.

Section 15(f) was added to require the appointment for Commissioner of Reclamation to be subject to the advice and consent of the Senate.

Section 16 was amended to provide that lease terms not exceed 25 years for perennial crops, and to clarify that leases and lessees as of January 1, 1982 must be in compliance with this Act within 10 years.

Section-by-Section Analysis

Section 1.—This Act is made amendatory to and supplementary of the Federal reclamation law. This has been a traditional means of extending reclamation law and it thereby invokes all of the existing provisions as well as administrative and judicial interpretations. It is the intention throughout this measure to preserve all such existing statutes and interpretations where they do not conflict with the provisions of this measure.

Section 2(a).—The term "district" is defined as any individual or legal entity established under State law which has entered into a contract or is eligible to contract with the Secretary for irrigation water.

Section 2(b).—The term "full cost" is defined as an annual rate which amortizes the construction costs properly allocable to irrigation facilities in service, plus operation and maintenance deficits funded, less payments, over such periods as may be required under reclamation laws with interest accruing from the date of enactment or expenditure, whichever is later. Interest in computed on the basis of the average interest rate payable by the Treasury on its marketable public obligations which are neither due nor callable for redemption for 15 years from the date of issuance. It is the intent of the Committee that the Secretary establish procedures to apply the "full cost" concept to water service and repayment contracts between the United States and various entities within the framework of the definition set forth in the bill.

Section 2(c).—The term "individual" means a natural person, including his or her spouse and other dependents as defined by the Internal Revenue Code, in order to provide a standard for determining the size of a landholding which could be held by a family group. Other independent adults and children would be entitled to separate landholding limitations.

Section 2(d).—The term "irrigation water" means water only made available for agricultural purposes from the operation of reclamation project facilities pursuant to a contract with the Secretary.

Section 2(e).—The term "landholding" is intended to include the total number of irrigable acres of land whether owned or leased which is served with "irrigation water." A landholding includes the total of all acreage in one or more districts or projects.

Section 2(f).—The term "qualified recipient" is a new term for purposes of applying the new provisions of this bill. In addition to indi-

viduals, the term "qualified recipient" would include legal entities such as partnerships or corporations which benefit 25 individuals or less.

Section 2(g).—The term "limited recipient" means legal entities which benefit more than 25 individuals.

Section 2(h).—Self-explanatory.

Section 3(a).—This section is a savings clause to preserve existing reclamation law, except to the extent that it is amended or inconsistent with S. 1867.

Section 3(b).—This section clarifies that existing statutory exemptions from the acreage limitation of Federal reclamation law are not repealed or amended by S. 1867.

Section 4(a).—This section establishes new acreage limitations for ownership and leasing under Federal reclamation law. An ownership limitation of 1,280 acres is set for qualified recipients, and 640 acres for limited recipients. An overall ownership/leasing cap is established for all recipients of 2,080 acres. Acreage covered by a 1-year lease for water management and conservation is not counted toward the acreage limitation.

Section 4(b).—This section provides that irrigation water may be delivered to lands leased in excess of the overall ownership/leasing cap only if full cost is paid for all lands leased in excess of the ownership cap. For example, if a qualified recipient owned 1,280 acres and leased an additional 800 acres, he would not pay full cost for any irrigation water delivered. If, however, a qualified recipient owned 1,280 acres and leased an additional 801 acres, he would pay full cost for irrigation water delivered to all 801 acres. Likewise, if a qualified recipient owned 1,000 acres and leased an additional 1,081 acres, he would pay full cost only on irrigation water delivered to the 801 acres leased which exceed his ownership cap. The full cost provisions are applicable in an identical manner to limited recipients except that the ownership cap is 640 acres. A limited recipient who owns 640 acres may lease an additional 1,440 acres without paying full cost. If the same limited recipient leases 1,441 acres, full cost would be paid on irrigation water delivered to all 1,441 acres.

Full cost is not applied to excess lands of either a qualified or a limited recipient which are under recordable contracts.

Section 4(c).—This section clarifies that the total landholding of either a qualified or a limited recipient includes not only lands held directly but also includes that portion of a landholding held indirectly by the recipient through such means as stock in a corporation or participation in a partnership.

Section 5.—This section provides for the application of the Class I equivalency concept on a programwide basis. The Committee intends that the Bureau of Reclamation will follow the practices and procedures implementing this provision which have been used in establishing Class I equivalency on projects for which the concept has already been authorized by previous Acts.

The land classification procedures used by the Bureau of Reclamation are basically economic classifications that reflect the crop productivity from project lands. In making these classifications the Bureau considers factors identified in the bill and a number of others, including the available water supply. It is the intent of the Committee that

the Secretary establish and apply procedures that reflect the economics of crop production in a district that will provide reasonably accurate data to make the Class I equivalency determinations for each district at a minimum cost and as expeditiously as possible.

Section 6.—This section clarifies that residency is not a requirement in order to be eligible to receive water from a reclamation facility. It is the intention of this section to remove any requirement for residency in regard to any project lands which are involved with the Federal reclamation law.

Section 7(a)(1).—This section prohibits the delivery of irrigation water made available from project facilities constructed after the date of enactment of S. 1867 to excess lands unless a recordable contract for disposal of such lands has been executed.

Section 7(a)(2).—This section prohibits the delivery of irrigation water to excess lands which are, or are capable of, receiving irrigation water as of the date of enactment of S. 1867, unless disposal of such lands is required by a recordable contract or the owners of such lands have requested that a recordable contract be executed.

Section 7(b).—This section requires that the period for disposal of excess lands not exceed 10 years.

Section 7(c).—Under this section landowners may only amend their existing recordable contracts to reflect the new acreage limitations of S. 1867.

Section 7(d).—This section provides that excess lands which are sold by the Secretary by power of attorney after expiration of the 10-year recordable contract period (which is a procedure of existing law) shall be sold only to qualified recipients and by impartial selection of buyers. No authority is granted to apply such restrictions to sales made by owners within the 10-year recordable contract period.

The Committee intends that excess land will continue to be appraised and sold at a price that does not reflect the value of the availability of irrigation water from the Federal project. Improvements made which are unrelated to irrigation water deliveries would be included in the fair market value, including such improvements as have been made for water delivery which are not related to irrigation water made available from a reclamation project; for example, groundwater pumps and delivery systems.

Section 7(e).—This section provides for an extension of the 10-year time period for disposal of excess lands subject to existing recordable contracts which is equal to the period of time for which there has been a moratorium on the approval of sales of such lands by the Secretary of the Interior.

Section 7(f).—This section provides that excess lands which have been disposed of in compliance with Federal reclamation law may receive irrigation water only if they are held by non-excess owners after disposal and, in the case of future disposals, unless the title to such lands is burdened by a covenant to prohibit the resale of such lands at a price greater than dry land value, plus the value of any improvements unrelated to irrigation water deliveries.

Section 8(a).—This section clarifies the Congressional intent that the acreage limitation of reclamation law does not apply to projects constructed by the U.S. Army Corps of Engineers unless: (1) by ex-

plicit statutory language the Congress has designated the project as a reclamation project or has integrated it with or made it a part of a reclamation project; or (2) in addition to the project works constructed by the Corps, the Secretary of the Interior pursuant to the Federal reclamation law has also provided project works for control or conveyance of an agricultural water supply to the lands in question.

Section 8 of the Flood Control Act of 1944 provided that dams constructed by the Corps of Engineers thereafter "may be utilized for irrigation purposes", and the Act authorized the Secretary of the Interior t become involved in such projects "under the provisions of the Fed al reclamation laws". The wording of the section is ambiguous and has given rise to sweeping controversies concerning the application of the reclamation law to agricultural lands which are benefited by dams constructed by the Corps. Subsequent court decisions and sporadic efforts on the part of successive Secretaries of the Interior to consummate contracts with various beneficiaries of Corps projects have served to create a shadow extending over all agricultural lands involved with Corps projects.

The Committee intends to make clear that section 8 of the Flood Control Act of 1944 did not, in and of itself, make the reclamation law applicable to any specific project. The specific legislation dealing with the project in question must be consulted to determine the applicability of the reclamation law.

It is the intention of the Committee that the Corps exemption does and shall apply to the projects on the Kings, Kern, Kaweah and Tule Rivers in California authorized by the Flood Control Act of 1944 (58 Stat. 887). It is also the intention of the Committee that this exemption does and shall apply to all Corps projects outside the 17 reclamation States. It is the general intent of this section to eliminate the shadow of applicability of the reclamation law to Corps of Engineers projects in any case in which the intent of Congress concerning such applicability is not clearly and explicitly set forth in statutory language.

Section 8(b).—The provision has been included in the bill to insure that the Secretary's authority to contract with water user entities for the irrigation water deliveries from Corps of Engineers projects, and to collect appropriate charges for those deliveries, continues in effect.

Section 9(a).—This section provides that the acreage limitations of Federal reclamation law will not apply to a landholding after repayment of construction charges has been completed. The repayment may be made by the contracting entity or by a person within a district if a contract existing on the date of enactment of S. 1867 provides for such payment.

This section also extends the applicability of acreage limitations to entities which enter into a contract in the future pursuant to the authority of the Rehabilitation and Betterment Act, covering the term of indebtedness under that contract, unless the contracting entity chooses to repay the debt with interest, pursuant to the Small Projects Act.

Section 9(b).—This section provides a procedure for any owner of a landholding to receive a certificate from the Secretary acknowledg-

ing that repayment has occurred and the landholding is freed from acreage limitations. The Committee is aware of numerous letters of exemption which have been issued in the past by the Secretary to individuals and entities. The Committee expects that all holders of such letters would qualify under the terms of this section and therefore be entiled to a certificate acknowledging their exemption.

Section 9(c).—This section prohibits lump-sum or accelerated payout except where provided for in contracts existing upon the date of enactment of S. 1867. Repayment may be made by either a district or an individual if such payments are permitted under existing contracts.

Section 9(d).—The Secretary is authorized to negotiate terms in any existing or future recordable contract to permit lump-sum or accelerated repayment if the outstanding indebtedness is less than 5 percent and a pattern of family farming exists. This section does not authorize the Secretary to amend the terms of existing contracts relating to repayment unless so requested by the contracting entity.

Section 10.—This section provides that individual religious or charitable entities or organizations will be treated as persons under the provisions of S. 1867. Individual religious or charitable entities include, but are not limited to, congregations, parishes, schools, wards or chapters. This section is applicable regardless of whether or not such entity or organization is the owner of record, because the Committee recognizes that in some religious organizations all property is held in the name of a hierarchical authority, such as a bishop, while the property for practical purposes is operated or managed by a subordinate entity of the same organization.

A religious or charitable entity or organization is qualified under this section if: (1) it is exempt from taxation under Section 501 of the Internal Revenue Code of 1954, as amended; (2) it directly uses the agricultural produce or proceeds of sale therefrom for charitable purposes; (3) it is the operator of the land; and (4) no part of its net earnings inures to the benefit of any private shareholder or individual.

Section 11.—This section exempts lands from the acreage limitations of Federal reclamation law in the following circumstances:

(a) when lands are held by an individual or corporate trustee in a fiduciary capacity for a beneficiary or beneficiaries whose interests in such lands do not exceed the acreage limitations;

(b) when lands receive a temporary supply of water for 1 year or less from an unusually large water supply which cannot be stored for project purposes or from unmanaged flood flows of short duration;

(c) when the lands are acquired by involuntary process of law including foreclosure, by bona fide conveyance in satisfaction of mortgage, by inheritance or devise, with the proviso that if after such acquisition the lands are not otherwise qualified to receive irrigation water under Federal reclamation law, they shall be furnished a temporary supply for not to exceed 10 years;

It is the intent of the Committee that this provision be construed to mean that the lands which will continue to be eligible to receive irrigation water for a 10-year period were eligible to receive an irriga-

tion water supply prior to the involuntary acquisition. The Committee does not intend this section to permit ineligible excess land to become eligible to receive an irrigatioin water supply by virtue of involuntary acquisition process.

(d) when the lands are isolated tracts, if the Secretary finds that they are economically viable only if included in a larger farming operation. In such cases, water would be delivered even if the lands were in excess of the landholder's acreage limitation;

(e) this section is intended to apply to the Central Arizona Project which, the Committee understands, is the only contracting entity that has a contract with the United States requiring an offsetting reduction in groundwater pumping for the irrigation water supply received from the Federal project. The term "substitute water supply" is intended to mean the irrigation water supply received from the Central Arizona Project.

Section 12.—This section provides that excess project water made available from reclamation facilities may be used for water quality, irrigation, municipal, or industrial purposes only if a contract requiring payment for the use of such project water has been executed in accordance with the Federal reclamation laws.

Section 13.—This section addresses contracts entered into between non-Federal entities and the Secretary, containing provisions which provide for "relief" from, or are otherwise related to, the acreage limitation of the Federal reclamation law upon repayment of the amount called for in the contract. The courts have said that such contract provisions are generally invalid unless the contract has been submitted to the Congress for review pursuant to the Reclamation Project Act of 1939 (53 Stat. 1187; 43 U.S.C. par. 485). The effect of this section would be to allow, at the initiation of the water user, validation by the Congress of such contract provisions which have not otherwise been validated following a review by the Secretary. Requests for validation must be made within 3 years of enactment of S. 1867.

Section 14.—This section gives the consent of the United States to be sued concerning the contractual rights of persons or entities who are parties or beneficiaries of water service or repayment contracts. Repayment contracts between water users and the Secretary are the usual vehicle for the application of acreage limitations to the project lands. Some such contracts have explicit provisions which were questioned by the courts on the grounds that they exceeded the Secretary's authority. Section 13 of S. 1867 provides for the Congressional validation of such provisions at the request of the water users.

In some instances, written representations were made to the water users concerning the interpretation of the reclamation law or of contract provisions which may have influenced the water users' decision to consummate the contract. This section provides access to the courts for parties or beneficiaries seeking to reform such contracts to be in accord with the terms of such representations, or other appropriate relief. The conditions of this permission are clear in the text.

Section 15(a).—This section authorizes the Secretary to prescribe regulations and directs him to collect data necessary to carry out the provisions of Federal reclamation law. It is the Committee's intent

that the Secretary not impose an unnecessary regulatory burden upon districts or individuals in carrying out his responsibilities. Only such data as are necessary to carry out the provisions of S. 1867 should be required.

Section 15(b).—The Act of July 7, 1970 (43 U.S.C. 425b) exempts certain State-owned lands from the acreage limitation. Section 3 of that Act provides that a State may lease lands for revenue so long as the lands of each leaseholder comply with the acreage limitation. Existing law limits such leasing arrangements to a period of 25 years from the 1970 date of enactment. This section would remove the 25-year limitation upon the States.

Section 15(c).—This section permits land which is acquired into excess status pursuant to foreclosure or other process of law, by conveyance in satisfaction of mortgage, by inheritance or devise, to be sold at fair market value without regard to other provisions of S. 1867 or 43 U.S.C. 423e. Included are mortgaged lands which change from non-excess to excess after the mortgage is recorded.

Section 15(d).—Self-explanatory.

Section 15(e).—Self-explanatory.

Section 15(f).—This section subjects the appointment to the position of Commissioner of Reclamation to the advice and consent of the Senate.

Section 16(a).—This section requires that leases for lands which receive irrigation water must be written and for a term not to exceed 10 years, except in the case of perennial crops. In addition, the Secretary must be provided with a certificate including a description of the lands leased, which includes: the number of acres, the terms of the lease, and a certification that the rent paid reflects the reasonable value of the irrigation water in the productivity of the land. This section is intended to create a mechanism to account for lands held by lease in a landholding which is subject to the provisions of S. 1867, and that such leases are at "arm's length".

Section 16(b).—This section requires leases in effect as of January 1, 1982, to be in compliance within 10 years of enactment of S. 1867.

Section 16(c).—This section requires lessees holding lands in excess of the acreage limitations of Federal reclamation law under valid written leases in effect as of January 1, 1982, to comply with the appropriate acreage limitations within 10 years.

Section 17.—This section requires reporting by contracting entities as may be required by the Secretary to implement S. 1867. As stated in reference to Section 15(a), the Committee intends that the reports which may be required be kept to the minimum necessary to properly carry out the provisions of reclamation law including S. 1867.

Cost and Budgetary Considerations

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

April 28, 1982

Alice M. Rivlin
Director

ENERGY AND NATURAL RESOURCES
RECEIVED
APR 28 1982
WASHINGTON, D. C. 20510

Honorable James A. McClure
Chairman
Committee on Energy and Natural
Resources
United States Senate
3104 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 1867, a bill to amend and supplement the acreage limitation and residency provisions of the Federal reclamation law, as amended and supplemented, and for other purposes, as ordered reported by the Senate Committee on Energy and Natural Resources, April 21, 1982.

Under existing federal reclamation law, individual holdings of lands eligible for irrigation water are limited to 160 acres, and lands in excess of the limit must be disposed of by landholders within a suitable period of time. Although the limitation has not been aggressively enforced by the Bureau of Reclamation, the majority of landholders are in compliance with the law. There is no limit on the acreage allowed for water delivery to leased lands.

This bill establishes two types of water users, the qualified recipient and the limited recipient, and raises the acreage limitation for both. Under S. 1867 both types of water users can receive reclamation water at the current "subsidized" rates for up to 2,080 acres of class I land, but of this total acreage only 1,280 acres can be owned by a qualified recipient and only 640 acres can be owned by a limited recipient. If a farmer wants to purchase reclamation water for irrigation for acreage exceeding this limitation, he must pay full cost (as defined in the bill) for all water received for irrigation of lands over these 1,280 acre and 640 acre ownership ceilings. (However, the bill also sets forth procedures for determining acreage equivalency, so in many cases these acreage limitations may be higher.) In addition, the bill exempts Corps of Engineers projects from its provisions and eliminates the present requirement that a farmer live within 50 miles of the land to be eligible for water.

Proposed regulations implementing current law were published on August 25, 1977, by the Department of the Interior. These regulations reflect the Bureau's intention to strictly enforce existing law regarding acreage limitations. (If the Congress does not enact this or a similar bill, the proposed regulations are expected to go into effect by fiscal year 1983.) S. 1867 will affect both outlays incurred by the Bureau of Reclamation for administration and enforcement and revenues generated by the sale of reclamation water. Total administrative costs expected as a result of enactment of S. 1867 are expected to be slightly less than under the proposed regulations, because under this bill the acreage limitation is increased, many districts are exempted from this limitation, and the current residency requirement is removed. (Such savings are unlikely to be more than $1 million per year.)

Receipts to the federal government from the sale of irrigation water would be affected by this bill as a result of the full cost pricing provisions for water delivered to excess acreages. Using only the criterion of the size of farm operations, and excluding Imperial Valley acreage, it appears that no more than 900,000 acres might be subject to full cost pricing (based on the December 1980 Westwide Report). However, much of this land is under recordable contract and is served by Corps of Engineers projects, and thus is exempted by S. 1867 from the full cost pricing provisions. Furthermore, it is likely that only a small proportion of farmers would choose to irrigate lands in excess of the 2,080 acreage ceiling because it would not be economical to do so. For example, it would be very expensive for a farmer to irrigate excess lands if his holdings only slightly exceed the acreage limitation, since operation of the additional lands would result in the payment of full cost for all lands in excess of the ownership cap (1,280 acres or 640 acres depending on the status of the recipient). Many very large landholders have already indicated that they will divest lands rather than pay full cost. Because of these uncertainties, there is no clear basis for determining the amount of acreage that would be subject to full cost pricing. However, the budget impact is not expected to be substantial. For example, if the full cost of water delivery were received on 225,000 acres (25 percent of the acres identified above), at an average additional payment of $45-$55 per acre, the additional annual receipts to the federal government resulting from the full cost provisions of the bill would approach $10-$12 million per year.

This bill contains a "consent to sue" provision which could also affect receipts to the federal government. This section would expand the definition of a contract for disputes between the U.S. government and reclamation water districts, and would allow additional evidence to be

introduced in litigation concerning such contracts. This provision could affect litigation currently in process regarding the price of water delivered by the Bureau of Reclamation to certain water districts and could result in a reduction of receipts to the federal government. If this occurs, the loss would approximately offset the additional receipts discussed above.

Sincerely,

Alice M. Rivlin
Director

cc: Honorable Henry M. Jackson
Ranking Minority Member

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out the provisions of S. 1867:

It is difficult to predict how many individuals or other entities would be significantly affected by the implementation of S. 1867. Sections 15(a) and 17 specifically require the Secretary of the Interior to collect and the contracting entities to provide, such information as is necessary to carry out the provisions of S. 1867. Section 16 requires information to be submitted by lessees regarding leases and imposes other new requirements upon leasing in general. While some of this information is already available, S. 1867 would require the submission of additional material.

The economic impact of S. 1867 is not easily ascertainable, but is believed to be positive. As a modernization and clarification of existing Federal reclamation laws, S. 1867 will relieve many individuals from the regulatory and economic burden of outmoded acreage limitations and residency requirements, as well as the costs associated with legal actions which have been necessary as a result of ambiguous administrative interpretations of past policy. In addition, the transition periods provided for compliance with the new requirements of S. 1867 together with the exemptions provided, serve to mitigate the potential regulatory and economic impact of the measure.

Executive Communications

The pertinent legislative reports and communications received by the Committee from the Department of the Interior and the U.S. Army Corps of Engineers, setting forth Executive agency recommendations relating to S. 1867 are set forth below:

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

December 7, 1981

Honorable James A. McClure
Chairman, Senate Committee on
Energy and Natural Resources
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is in response to your request for this Department's views on S. 1867, a bill "To amend and supplement the acreage limitation and residency provisions of the Federal reclamation law, as amended and supplemented, and for other purposes."

This Department would support S. 1867 if it is amended as suggested in this report.

General Principles

We are supportive of your efforts to find legislative solutions to the problems created by the 1902 Act. We believe the 1902 Reclamation Act is outdated and reclamation reform is therefore badly needed. Further, the Department is under court order to promulgate regulations consistent with the 1902 Act's 160 acre limitation. We believe that the promulgation of regulations to require the disposal of lands in excess of 160 acres will create chaos in the real estate markets and be unfair to farmers and other landholders.

Our comments on S. 1867 reflect this Department's underlying concepts for reclamation reform. First, we believe that the traditional farm concept should be retained. We support a 960 acre limitation for the delivery of subsidized water and believe that, above that limitation, users should pay full cost for water. Second, we believe that once users pay full cost there should be as little regulation by the Federal Government as possible.

Although we agree with the basic outlines of the bill, we recommend a simpler approach to acreage limitations. Rather than the Title I/Title II distinction contained in the bill as drafted, we recommend a 960 acre limitation for the delivery of subsidized water. We also support the concept of unlimited leasing contained in the S. 1867 but we believe the full cost provisions should apply for lands in excess of 960 acres. We prefer the elimination of the Title I/Title II distinction because, under Title I, there is no provision for full cost payment.

We recommend the following concepts be incorporated into a single section:

a. Irrigation water will be delivered to a landholding of 960 acres or its equivalent at the contract rate based on ability to pay.

b. Irrigation water may be delivered to a landholding of unlimited size if the excess land is operated under lease and full cost is paid for water delivered to such excess land.

c. Proportional ownership should be used to determine whether a landholding exceeds 960 acres.

d. A grandfather clause will be included for existing leases for a term not to exceed 10 years and recordable contracts until they expire.

Our suggested language to accomplish this purpose is included as an attachment.

Under the approach we recommend, farm operators who are in compliance with the existing law as it has been administered would be permitted to continue their operations without the application of the full cost concept to land in the operation in excess of 960 acres in cases where the excess acres are, at the date of enactment of the legislation, either held under a valid written lease for a term not to exceed 10 years or are subject to sale under a recordable contract. While we do not believe that the "rules of the game" should be changed for those operations for which written commitments have been made, we believe it is fair to require payment of full cost for lands above 960 acres in new projects and in those current operations that can be conformed to the requirements of this legislation without invalidating existing written commitments the farm operator has made.

Although we recognize that the interest rate contained in S. 1867 is higher than the interest rate contained in the House version of reclamation reform legislation, we recommend an interest rate that more accurately reflects the fact that the cost of money to the government is currently based on relatively short term instruments. We recommend instead that the definition of the term "full cost" in section 201(d) read as follows: "The term 'full cost' means all construction costs of facilities in service which are properly allocable to irrigation, plus all operation and maintenance deficits funded, less credit for payments, with interest on both accruing from the date of enactment of this Act on costs outstanding at that date, or, in the case of new contracts, from the dates the costs are incurred, plus current operation and maintenance costs. The interest rate used pursuant to this Act shall be determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with approximately 5 years remaining to maturity during the month preceding the date of enactment of this Act on costs outstanding as of that date, or, in the case of new contracts, during the month preceding the fiscal year in which the costs are incurred. The interest rate so determined on the unrecovered balance shall be redetermined every 5 years to reflect the average market yield at that time on outstanding marketable obligations with approximately 5 years remaining to maturity."

Other provisions in S. 1867 that we support include the repeal of the residency requirement contained in section 101. In addition, we interpret section 102 as applying class I equivalency on a district basis, which we support. This conforms with practices that have been followed in the past for the 18 projects for which the use of class I equivalency has been authorized.

However, we believe that the use of class 1 equivalency should be limited to areas with a shorter growing season. It is only in those areas that the need for class 1 equivalency might exist if, in fact, it will exist anywhere after provision is made for a 960 acre limitation. The Department considers a number of factors in determining the formula to apply equivalency including the crops produced and the length of the growing season. Class I equivalency has not been used in projects with

a frost-free growing season of more than 180 days. Thus to accomodate the need for equivalency, we would suggest that the following sentence be inserted at the end of section 102: "The Secretary may apply class I equivalency only to those districts where a majority of the irrigable land has a frost-free growing season of 180 days or less based on records published by the Department of Commerce."

Finally, we support the provisions of S. 1867 that provide for exemption of Corps of Engineers projects from the reclamation laws and for various other exceptions from the application of the acreage limitation requirements.

Our further suggested technical amendments are outlined below.

Specific Amendments

In section 2(c) of S. 1867, we recommend the words "individual, or any legal" and the phrase "established under State law," be deleted and the following phrase be added at the end of the subsection: "or is eligible to contract with the United States for irrigation water." This would broaden the application of the bill to include districts which do not now have a contract with the United States and would make the definition compatible with other recommended changes.

As noted above, we believe that the distinction between Title I and Title II in S. 1867 is inadvisable. We recommend that section 3 be revised to delete the reference to Title I and Title II, as follows: "The provisions of the Federal reclamation laws shall remain in full force and effect, except to the extent such laws are amended by, or are inconsistent with, this Act."

Section 103 covers recordable contracts between owners of land and the Secretary of the Interior. We support this section with the modifications discussed below.

Section 103(a) provides that the disposition period for a recordable contract begins when water deliveries begin. There may be a time lag between the execution of a recordable contract and the initial delivery of irrigation water. In order to establish a definite disposition period for the recordable contract, we recommend the disposition period begin when the recordable contract is executed. This would be consistent with current practices for handling recordable contracts and can be accomplished by revising the last sentence in the section to read as follows: "Such reasonable time shall be established by the Secretary, but shall not exceed 10 years after the recordable contract is executed by the Secretary in accordance with terms and conditions required by Federal reclamation laws generally."

In subsection (b) we recommend that lines 11 through 15, on page 4, be deleted and the following phrase be inserted: "have requested that a recordable contract be executed by the Secretary." Recordable contracts are in a standard form and are not subject to negotiation by the landowner.

Section 103(e) should apply to all excess lands subject to recordable contracts under all Federal reclamation laws, not only to those recordable contracts executed "pursuant to this Act." To clarify this, we recommend lines 10 through 13, on page 5, be deleted and the following phrase be inserted: "Excess lands which

have been disposed of in compliance with Federal reclamation laws may be considered eligible to receive irrigation water made available through the operation of reclamation project facilities only:".

Section 104 exempts Corps of Engineers projects from application of the reclamation laws. We support this exemption. Projects which are built primarily for purposes such as flood control should not be subject to acreage limitations. Any special costs or proposed acreage limitation requirements are more properly considered in the specific legislation authorizing these types of projects.

Section 105 is not required with the revisions to the bill we are proposing and should be deleted.

Section 106 contains various additional exceptions and exemptions from the acreage limitations and other provisions of the reclamation law which might otherwise prohibit the delivery of irrigation water. They cover (1) projects which have completed repayment of construction costs; (2) charitable organizations; (3) a fiduciary for a beneficiary whose interests do not exceed the acreage limitations; (4) land using temporary water supplies; (5) lands acquired by involuntary foreclosure; (6) isolated tracts; and (7) lands served with a temporary supply which may later be withdrawn for municipal and industrial purposes. We support these provisions, with the technical amendments discussed below.

In applying the exemption that would be provided by the bill to projects which have completed repayment of construction costs, we believe the exemption should be applied on a district basis and not to an individual landholding. Our repayment and water service contracts are with districts, not with individual landowners. The obligation of the district is tied to all land in the district that is benefited by the Federal project and, thus, any exemption on the repayment of the obligation should apply to the entire district. Further, the granting of exemptions to individuals on the basis of a payout within a district could create a checkerboard pattern in a given district, making the administration of the law significantly more difficult in that district. To eliminate this possibility, we recommend the words "for the irrigation of any lands", on line 5, page 7, be deleted.

In section 106(a) we recommend that the words "to make water available for delivery to such lands" on line 8, page 7, be deleted and "for delivery of irrigation water to lands in the district" be inserted; on line 24 and 25, page 7, that "contracting entity or owner or owners of land" be deleted and "district" be inserted; and on line 5, page 8, that "such lands" be deleted and "district" be inserted. These changes will accomplish our goal of providing exemptions for repayment on a district basis and will simplify administration of the program.

We believe the proviso in section 106(a) is unclear. If the intent is to ensure that funds advanced to a district for a rehabilitation and betterment program under the authority of the Rehabilitation and Betterment Act and the contract between the district and the United States for the repayment of those funds is not the basis for imposing, continuing or reimposing the acreage limitation provisions of Federal Reclamation law on that district, we fully agree with it. We do not consider funds advanced for a rehabilitation and betterment program as construction costs but rather as maintenance costs and do not require compliance with acreage limitation

based on such advances. We recommend this position be explicitly set forth in a separate section of the bill. We will be happy to work with you to develop appropriate language to accomplish this objective.

Under subsection 106(e), land acquired by involuntary foreclosure, including excess land that was not eligible for water before the foreclosure, would become eligible to receive project water for a 10-year period. We believe that only land which was eligible before foreclosure and which becomes ineligible after foreclosure because it would exceed the acreage limitations should be permitted to receive water for the 10-year period. To permit ineligible excess land to become eligible for water through involuntary foreclosure could invite friendly foreclosures for the purpose of making ineligible excess land eligible for water for a 10-year period. We recommend that S. 1867 be amended by inserting the words "provided such lands were eligible to receive water prior to foreclosure" after the word "foreclosure," on line 22, page 8. We believe the 5 year disposition period provided in existing law provides ample time to a landowner to sell land that has been acquired involuntarily and should be retained. We therefore recommend that the word "ten" on line 3, page 9, be deleted and the word "five" be substituted in lieu thereof.

Section 107 requires that a contract requiring payment for irrigation water made available on a temporary basis be executed in accordance with the Reclamation Project Act of 1939 and other applicable provisions of the Federal reclamation laws. We have no objection to this provision.

Section 108 would establish a procedure for the validation of provisions of contracts between the United States and water user entities at the request of the water user entity. As written it would only apply to requests submitted within three years after the enactment of the Act. The request would be submitted to the Secretary of the Interior who would forward it to the Congress along with his recommendations within 90 days. If Congress did not disapprove the request within 90 days the contract provisions would be considered validated.

The effect of section 108 could be to validate various provisions that may be in conflict with the acreage limitations and other provisions established by the Act as well as other Federal reclamation laws. The section would permit the validation of a particular provision of a contract rather than the entire contract. If any of these situations were to occur the administration of reclamation law and the contract could become much more complicated than it is now.

Furthermore, we believe that virtually all questions which this section has been designed to cover relate to payout, and since payout is already covered under section 106(a), we see no necessity for the inclusion of this provision. Without a showing of compelling need for validation and given the problems this provision could create, we recommend that the validation provision be deleted from the bill.

Section 109 provides that actions involving contractual disputes between water users and the Secretary will be heard in the United States district court for the district in which the project facilities are located. It also gives the court authority to reform contracts based on any written representations made by the Secretary or his agents. We have no objection to this section but we recommend that the word "produce" on line 6, page 11, be deleted and the words "store and deliver" be inserted in lieu thereof in order to clarify the provision.

Section 110 covers various administrative provisions. We have no objection to any of these subsections.

In order to clarify that all land held by a qualified recipient in all projects receiving a Federal project water supply will be included in determining the applicability of the acreage limitations to that recipient, we recommend the definition of the term "landholding" in subsection 201(c) be amended to read as follows: "The term 'landholding' means the total irrigable acreage of one or more tracts of land in all projects governed by Federal reclamation law owned or operated under a lease by a qualified recipient which is served with irrigation water under a contract with the Secretary."

There are two remaining provisions we believe should be added -- a provision for enforcement of the Act through civil penalties and a severability provision.

With the changes outlined herein we believe the Congress will have achieved the critically needed reform of the reclamation laws. We would be pleased to supply a drafting service to the committee if requested which would incorporate the above suggestions into the bill.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

James G. Watt

SECRETARY

Enclosure

Attachment

"Acreage Limitation"

(a) Nothwithstanding any other provision of Federal reclamation laws, a landholding shall be considered within the limitation on acreage of land which may be served irrigation water at the rate specified in the district's contract with the United States to the extent that it does not exceed 960 acres or the equivalent thereof, where applicable.

(b) Irrigation water may be delivered to a landholding in excess of 960 acres or the equivalent thereof, where applicable, only if the excess land is operated under a lease and full cost is paid for water deliveries to the land in the landholding that is in excess of 960 acres: Provided, That such excess land is in an ownership that does not exceed 960 acres that can be served with irrigation water or is subject to a recordable contract or is otherwise eligible to receive irrigation water.

(c) In determining whether a landholding exceeds 960 acres, the Secretary shall add to any landholding held directly by an individual, whether by ownership or lease, that portion of any landholding held by a legal entity or entities operating as a qualified recipient from which that individual benefits in proportion to the interest of the individual in the legal entity or entities, except that, in the case of any landholding held by any such legal entity in which ownership shares are publicly traded, the interest of any individual in such entity shall not be considered in determining such individual's landholding.

(d) The provisions of this section shall not apply to land in any landholding that, at the date of the enactment of this section, is held under a valid written lease for a term not to exceed ten years or is subject to sale under a recordable contract, until such time as such lease expires or is amended or such land is sold under such contract or such contract expires or is amended.

DEC 7 1981

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20310

DEC 1981

Honorable James A. McClure
Chairman
Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Your Committee has before it S.1867, 97th Congress, to amend Federal reclamation law. With the clarification recommended in this report, we support enactment of Section 104 of S.1867.

Section 104 of S.1867 is intended to provide a clear statement that reclamation law is to apply to lands benefitted by water resources projects constructed by the U.S. Army Corps of Engineers only in circumstances where required explicitly by Federal statute or where the Secretary of the Interior, pursuant to his authority under the Federal reclamation law, has provided project works for the control or conveyance of an agricultural water supply for the lands involved. We support this objective. We recommend that to ensure achieving this intended objective, the words "shall be" on line 7, p.6 of S.1867, should be deleted and replaced with the word "are."

OMB has advised that there is no objection to the presentation of this statement from the standpoint of the Administration's program.

Sincerely,

William R. Gianelli
Assistant Secretary of the Army
(Civil Works)

ADDITIONAL VIEWS OF SENATOR HATFIELD

The sponsors of S. 1867, as amended, are to be congratulated for their complete and detailed understanding of a highly complicated program and for their "consistency" in addressing controversial issues such as leasing and contract payout. With regard to the proposed acreage allowances, however, S. 1867 maintains limits that are too liberal and which are inconsistent with both current farm practices and historic reclamation policy.

Specifically, I refer to the Department of Interior's draft Environmental Impact Statement which indicates that the average size reclamation farm in the west is 177 acres and that 97 percent of all such farms are less than 960 acres. The allowance of 2,080 acres provided for in S. 1867 is over two times the size of nearly all reclamation farm operations in the West. Clearly, current farm practices indicate that 2,080 acres is too liberal and that a lower limit of 960 acres would be sufficient to accommodate nearly all on-going farm operations and still provide potential for expanded farm opportunities.

A second point of inconsistency is that by establishing such a liberal acreage limitation, S. 1867 permits Federal reclamation benefits to concentrate with large farm operations instead of being equitably distributed to smaller family operated farms as is intended by the 1902 Reclamation Act. A less liberal acreage limit would assure the preservation of the "small farm" concept and prevent potential abuse and exploitation of a lucrative federal subsidy.

On the whole, S. 1867 fairly and squarely resolves a host of complicated and controversial issues within Federal reclamation policy. The acreage allowance of 2,080 acres, however, is inconsistent with both current farm practices and historic reclamation policy.

MARK O. HATFIELD.

ADDITIONAL VIEWS OF SENATOR WALLOP

The Pine Flat Dam and Reservoir was authorized in 1944 as a flood control project to be built on the Kings River by the U.S. Army Corps of Engineers; however, it was stated in the authorizing statute that it would also provide an incidental irrigation service of "conservation storage" to be paid for by the landowners. Flood Control Act of 1944, ch. 665, § 68, 58 Stat. 591 (1944). The water storage feature was valued at $14.2 million of which the landowners have repaid all but $2.8 million.

After the 1944 Act was enacted into law, government officials in the Roosevelt and Truman Adminstrations contended that section 8 of the 1944 Act mandated that the landowners' storage of their water, all rights to which were fully vested and perfected in private interests under California State law, without more imposed acreage limitations and all other provisions of reclamation law. The landowners never conceded this legal conclusion, and consistently and vigorously opposed such Federal intervention and abrogation of fundamental western State water rights. Also following enactment, Federal Government officials represented that, in any event, payout would remove the principal objectionable feature of reclamation law, the acreage limitations, a representation that the government subsequently repudiated.

Litigation over the interpretation of section 8 ensued and the federal trial court ruled that a project, having no attributes of a reclamation project, was not legally or functionally a reclamation or irrigation project, and therefore not subject to reclamation law. Even if applicable, the trial court held that payout would remove the acreage limitation. *United States* v. *Tulare Lake Canal Company*, 440 F. Supp. 1185 (E.D. Cal. 1972). The government appealed and the Ninth Circuit of Appeals reversed. *United States* v. *Tulare Lake Canal Company*, 535 F.2d 1093 (9th Cir. 1976).

The purpose of the Corps exemption of S. 1867, 97th Cong., 1st Sess. § 8 (1982) is to clarify existing law, including the Flood Control Act of 1944, because it was misinterpreted by the 1976 Ninth Circuit decision, and, therefore, section 8 of S. 1867 renders *Tulare Lake* moot. *Tulare Lake* failed to give significance to the 1944 Act's provisions projecting State water rights from being preempted by Federal restrictions, as well as to references in the legislative history to "surplus water." After the 1976 *Tulare Lake* decision, two important reclamation law decisions were handed down by the Supreme Court, reversing the Ninth Circuit in both. Those two decisions clearly make the 1976 decision incorrect.

The policy consideration of the reclamation program and the factual circumstances of the Kings River project make a compelling case for an exemption. On the law alone, however, the exemption is conclusively justified. The Corps exemption of S. 1867 is technically not an exemption but more accurately a reinstatement of the Kings River water rights. A brief outline of these considerations follows:

1. As a matter of law, acreage limitations and other provisions of reclamation law are not applicable to Kings River through section 8 of the 1944 Act because: the 1944 Act did not clearly, specifically or explicitly impose acreage limitations, *see California* v. *United States*, 57 L. Ed. 2d 1018 (1978); the privately owned water rights are fully vested and perfected under the state and cannot be made subject to acreage limitations, as the Supreme Court held in the Imperial Valley decision, *Bryant* v. *Yellen*, 65 L. Ed. 2d 184 (1980); the project produces no "project water" and the 1944 Act's legislative history explains that if reclamation law was applicable it was to "surplus water" only, *see* 90 Cong. Rec. 8625, 8626 (Remarks of Mr. Overton).

2. The 1944 House Flood Control Committee Report accompanying the 1944 Act legislation, H.R. Rep. No. 1309, 78th Cong., 2d Sess. (1944), made clear the Kings River landowners' understanding that if the Corps built the dam, reclamation law would not apply:

> Local [Kings River] interests are so strongly in opposition to a project built under reclamation law that they have stated that rather than have the project built by the Bureau of Reclamation they prefer no federal project at all.

3. Under the long-standing reclamation law principle of "payout" the repayment in full of allocated construction cost would automically causes acreage limitations to be permanently removed:

> (a) Kings River landowners relied in good faith on the repeated written assurances by the Interior Department that "payout" would occur upon repayment, including the written official representations of:
>
> (1) The Interior Department's Secretary on November 2, 1950; March 2, 1954; and July 12, 1957.
>
> (2) The Commissioner of the Bureau of Reclamation on January 18, 1952 and November 9, 1952.
>
> (3) The Assistant Interior Secretary on May 5, 1954 and May 19, 1954.
>
> (4) The Interior Solicitor on August 9, 1957 and January 3, 1961.
>
> (b) The history of the Federal government's assertions of the validity of payout has been traced over a half a century in a lengthy and detailed legal memorandum included in the hearing record;
>
> (c) Repayment eliminates the so-called "Federal subsidy" justifying acreage limitations under reclamation law; and
>
> (d) Twenty-two of the twenty-eight Kings River water districts have fully repaid a sum in excess of $12 million.

4. Because Kings River, like other Corps projects, has none of the fundamental reclamation project characteristics, the application of reclamation law produces practical absurdities:

> (a) the project did not supplement nor did it add new water to the existing water supply;
>
> (b) the project did not irrigate arid or semi-arid lands, since the area was fully developed agriculturally long before the project was authorized;
>
> (c) the project did not bring additional public or private lands into irrigation;
>
> (d) the project did not add or improve any water distribution works, because an efficient and privately owned distribution sys-

tem, built at a cost to private interests of almost twice the project cost, was operational before the project;

(e) The landowners' water rights were vested and perfected long before the project was authorized, and are entitled to the same significance as the water rights under California State law which the June 16, 1980, Supreme Court landmark decision in *Bryant* v. *Yellen*, the so-called Imperial Valley care, held to be so superior as to render acreage limitation inapplicable to the Imperial Valley's pure reclamation project;

(f) The project was built as a flood control project but nonetheless, frequent serious flooding still occurs;

(g) The project's irrigation function, conservation storage, are incidental; and

(h) The Federal Government owns no water or water rights of the Kings River, and contracted away any existing or future water rights under the Fresno Slough Agreement.

5. The application of reclamation law in Kings River would be detrimental to all landowners, large and small:

(a) Landowners owning excess acreage, the Ninth Circuit conceded in *Tulare Lake*, can choose not to use the storage and controlled water release services of the project, by-pass the dam, and by their so taking their water "free-flow", reclamation law will not attach;

(b) If forced to choose, the large landowners will take their water "free-flow" to avoid reclamation law and the need to sell their lands;

(c) Without the large landowners' water to carry small landowners' water downstream during the dry months in the growing season, the small landowners will have more serious water loss through water seepage and evaporation, and therefore, the important water conservation needs of all landowners on the Kings River will be defeated;

(d) The surface water lost by small landowners because of "free-flow" will require them to undertake the expensive pumping of water from the underground supply, which is already dangerously low;

(e) Because the large landowners, particularly in the Tulare Lake Basin, can store their "free-flow" water on their lands, the small landowners least able to bear the resulting financial burden will be the far more injured parties; and

(f) The water interests of Kings River's 20,000 large and small landowners are, therefore, interdependent, and all seek relief through the exemption.

6. The California State Legislature Joint Resolution passed in July, 1979, by a nearly unanimous combined vote of 112–2, petitioned the Congress to grant Kings River a reclamation law exemption, the conclusion states:

> *Resolved by the Assembly and Senate of the State of California, jointly*, That the Legislature of the State of California respectfully memoralizes the President and the Congress of the United States to enact legislation to specifically exempt the Kings River service area from the provisions of reclamation law. . . .

MALCOLM WALLOP.

ADDITIONAL VIEWS OF SENATOR JACKSON

I intend to support passage of S. 1867, both because it represents a satisfactory compromise of many difficult issues and because we desperately need an end to the uncertainty that currently surrounds reclamation law. However, I must express my concern regarding the acreage limitation provisions of the bill.

Those who support a large acreage limitation have argued: (1) that the new acreage limitation must reflect modern farm economics; and (2) that the new limitation must anticipate a need for even larger farms so that Congress will not need to amend the law again in the near future. I agree with these arguments, but would add a countervailing consideration.

One of the basic purposes of the reclamation program is that project benefits should be distributed as widely as practicable to existing and prospective farmers. Indeed, this policy underpins the 160 acre ownership limit contained in the 1902 Act. In establishing a new acreage limitation to reflect current and anticipated farm economics, I believe it is important that we do not abandon the policy of broad distribution.

I say this is not out of a blind adherence to concepts of agrarian reform, but because we must be mindful that this policy is also the rationale for continuing the reclamation program. Future reclamation projects can be justified only if they benefit a large number of farmers; such projects cannot be justified if their principal impact is to allow large farms to become larger.

Thus, I share the sentiments of many of my constituents who feel that the combined limit of 2080 acres owned or leased is too generous. I believe that the 1280 acre limit contained in S. 14 back in 1979 was more than adequate. Were it not for the new political realities, and my foremost desire to see a bill pass this year, I would be far more adamant on this issue.

My tolerance, however, does not extend to the acreage limitation provisions of the House bill. By continuing to allow unlimited leasing without payment of full cost, the House bill effectively condones the delivery of federally-subsidized irrigation water to large corporate landholdings. This rightfully is opposed by those who would otherwise support the reclamation program. Reclamation reform must not only recognize modern farm economics but also remain true to the basic purposes of the program.

HENRY M. JACKSON.

SUPPLEMENTAL VIEWS OF SENATOR NICKLES

It will be noted that I am in accord with the purpose and the necessity of this legislation, and have been recorded in the affirmative in the Committee action on S. 1867, a bill to amend and supplement the Federal reclamation laws.

During the Committee mark-up of the bill, I offered an amendment to Section 5 dealing with the determination of land class equivalency which would have added to the criteria and standards which the Secretary is required (but to which he is not limited) to consider, the criterion "availability of irrigation water."

This criterion is necessary because certain irrigation districts when conceived, designed, and built, were intended as supplemental water supply to natural rainfall and were recognized from the outset to be inadequate for supplying full irrigation every year to the lands included in the district. Contracts, reciting this fact, limit the withdrawal of water for irrigation purposes to an amount less than the amount necessary for full irrigation.

If class I equivalency is to be defined as "the best land under full irrigation," certainly accommodation must be made for the lack of sufficient irrigation water in determining land class and resultant acreage limitation adjustments.

My amendment was subsequently withdrawn with the assurance of my fellow Committee members that the need would be suitably addressed in the accompanying report, as I believe it has been, and I would encourage the Department to take this consensus of the Committee into consideration in promulgating and enforcing rules relating to the determination of land class equivalency.

DON NICKLES.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1867, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

An act to provide for the differentiation between private and public ownership of lands in the administration of the acreage limitation provisions of Federal reclamation law, and for other purposes

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SEC. 3. Lessees of irrigable lands owned by States, political subdivisions and agencies thereof which are held to be subject to the acreage limitation provisions of Federal reclamation law and for which recordable contracts to sell have not been made may receive project water [for a period not to exceed twenty-five years] from the date of approval of this Act subject to the same acreage limitation provisions of Federal reclamation law as private landowners.

An act to provide for the appointment of a Commissioner of Reclamation, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That under the supervision and direction of the Secretary of the Interior, the reclamation of arid lands, under the Act of June 17, 1902, and Acts amendatory thereof and supplementary thereto, shall be administered by a Commissioner of Reclamation, who shall receive a salary of $10,000 per annum, and who shall be appointed by the President[.] *by and with the advice and consent of the Senate.*

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